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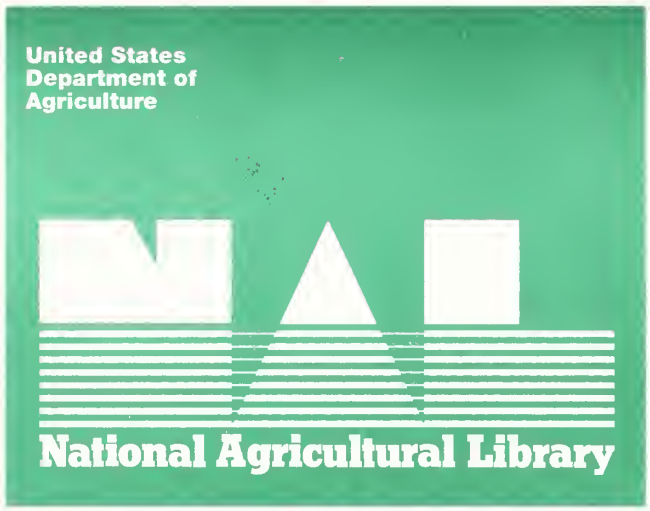
The Shipping Act of 1984:

Focus on Agriculture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The Shipping Act of 1984: Focus on Agriculture

Proceedings from USDA Office of Transportation Ocean Shipping Workshops

Workshop Proceedings Editors - Robert Neenan and Amy Friedheim,
Economists, USDA Office of Transportation

December 1989

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Introduction

USDA's Office of Transportation organized three Ocean Shipping Workshops during 1988 and 1989. Their purpose was threefold:

- To inform agricultural shippers of the effects of the Shipping Act of 1984.
- To advise shippers of the mechanisms that are available to operate most efficiently in the current shipping environment; and
- To encourage shippers to participate in the Shipping Act review process.

Topics discussed included:

- The advantages and disadvantages of conference antitrust immunity (the existence of the conference system);
- Problems shippers have in obtaining service contracts and in negotiating with conference representatives;
- The question of whether or not mandatory independent action should apply to loyalty and/or service contracts, and what form these contracts should take.

This report contains copies of the edited remarks made by some of the workshop speakers, and a transcript of a debate of the issues between shipper and carrier representatives. The workshops were held in Fresno, CA, on May 26, 1988; in Houston, TX, on October 27, 1988, and in Lakeland, FL, on February 9, 1989. Approximately 300 shippers, carriers, freight forwarders, government personnel, and members of the media attended these events. Copies of the programs and a list of attendees are included at the end of this proceedings.

Excerpts

The following are excerpts of comments made by invited speakers:

"...conferences often operate more from arrogance than intelligence. They set the pricing under which all independent carriers umbrella themselves, and many times, they seem unwilling to listen to our commodity problems."

"... freight rates do have a direct bearing on our product reaching consumers in other parts of the world. Believe it or not, in the raisin industry, business is gained or lost by as little as a penny per pound. ... freight rates affect the ultimate consumer price in foreign markets. Bonner Packing must compete with Greece, Turkey, and South Africa. Our rates with this kind of competition in close proximity have to be adjusted. Remember, a penny a pound can make the difference between maintaining or losing a market."

Chuck Villard
Bonner Packing Company

"While we [agricultural shippers] were not unprepared to accept the rate reductions, we didn't put a gun to the heads of the shipping executives and force them to oversupply the Pacific trade lanes with ships and containers. Those bad decisions were theirs."

Pat Hanemann
Dole Citrus Company

"Our industry unanimously agrees that we must have the right to negotiate service contracts and that conference members must be allowed the right of independent action on service contracts. ... We feel that service contracts would afford us the opportunity to regain control of sales which have almost totally reverted to an FOB basis."

Sally Tabb
Tri-State Export Corporation

"Loyalty and service contracts, fairly and properly negotiated to serve the interests of both the carrier and customer, are essential elements of the formula for successful competition in the global marketplace of the future. It is only through these partnerships that U.S. trade interests can be properly served."

Bill McCurdy
E.I. Du Pont de Nemours & Co. Inc.

"The impact of rate volatility on exports of our commodity is profound. Cotton is typically sold 6 to 9 months in advance of actual shipment... the stability of rates has tremendous importance."

Bob Poteet
Texas Cotton Shippers Association

"The CAF [currency adjustment factor] has become a major item in our total export cost. In my opinion, the conference-controlled THC [terminal handling charge], CFS [container freight station], and CAF charges we have today are simply artificial rate increases. The CAF seems to have become a pendulum that is attached to a fulcrum that allows it to only swing upward."

Phil White
Excel Corporation

"World trade is changing rapidly. If shippers are to remain globally competitive, they must control every aspect of their business. In recent years, they have abrogated too much control to foreign buyers. ... If shippers fail to act, however, their position will deteriorate even further. Foreign buyers will increase their profits by dominating purchasing agreements. The carrier conferences, for their part, will lobby Congress for stronger cartels and will gain greater control over the ocean shipping industry. On the other hand, if shippers take the initiative, they can meet the challenge and regain their competitive edge, expand trade, and increase profits."

Perry Walker
Riverbend

"Winston Churchill once said that the English and American peoples are two peoples divided by a common language. This is apparently true of shippers and carriers. But if that is the bad news, the good news is that we can fix that."

Ray Ebeling
Sea-Land Services, Inc.

"The pricing of ocean freight transportation should be established by supply and demand, not by independent cartels. Other carriers (such as truckers, railroads), freight forwarders, and other vendors have to be competitive in the marketplace or they do not obtain our business. The TWRA would like nothing better than to have every westbound carrier as a TWRA member. This would make every shipper a captive to any rate the conference would like to assess. I feel if this were to happen, many shippers would not only lose their current markets, but would also lose many potential new markets."

Paul Crouch
CALCOT Ltd.

"...conferences, in my opinion, foster competition. Not only is the competition intense among conference carriers, but also the competition is intense between conference carriers and independents."

Mike Diaz
APL Intermodal, Inc.

''Why should independent action be extended to service contracts in the act? Because the shippers said then, as they are saying today, 'Hey, we'll take the risk of discrimination.' Shippers want the chance to negotiate so they will take the risk of discrimination. We are, once again, hearing the carriers saying, 'We want to protect you shippers from discrimination.' And the shippers are saying, 'We do not wish you to protect us.'''

Peter Friedmann
Agriculture Ocean Transportation Coalition

Foreword

Martin F. Fitzpatrick
Administrator
USDA Office of
Transportation

Ocean shipping is a key element in agricultural exporting. Total agricultural exports amounted to nearly $37 billion in 1988, 20 percent of all U.S. agricultural production. The fastest growing export commodities are high-value products, which are transported in ocean containers. During the last 10 years, the value of agricultural container traffic has increased from $8.5 billion to over $15 billion. In 1987, for the first time, the total value of agricultural liner traffic actually exceeded the value of bulk grain shipments.

Agricultural exports also are important for the whole U.S. economy. In 1988, agricultural industries exported $14 billion more than they imported, making a much needed positive contribution to the U.S. balance of trade. A recent USDA study found that each dollar of agricultural exports generates an additional $1.50 in total economic activity. Export markets offer great opportunities for many shippers, but capitalizing on these opportunities will be contingent on the availability of cost-competitive and high-quality ocean shipping service.

The Shipping Act of 1984 is the most significant legislation to affect the ocean shipping market in decades. It was intended to revive the ailing U.S. flag carriers, and add stability and flexibility to the ocean liner market. The options available to the steamship conferences were expanded, including accelerated agreement approval, intermodal authority, and independent action provisions. Despite these advantages, a number of carriers experienced financial problems since 1984.

The period since 1984 has also been quite turbulent for agricultural exporters. We have seen sharp movements in the value of the dollar abroad, changing trade policies in foreign markets, and emerging agricultural competitors. The Shipping Act also has affected exporters. The role of a conference is to maximize carrier revenue, a goal which can frequently conflict with the needs of the agricultural shipper. However, there has been vigorous competition among some conference carriers as a result of service contracts and independent action. These factors have resulted in rapidly changing ocean freight rates for certain commodities and markets.

For some agricultural commodities, ocean freight accounts for as much as 50 percent of total landed cost. It is estimated that the total ocean freight bill for high-value exports is as much as $3 billion annually. Rapid upward swings in freight rates can greatly reduce profits or market share. Agricultural shippers have expressed concern over recent developments in ocean shipping. Some are planning to be involved with the Shipping Act review in 1989 to ensure that agriculture's voice is heard.

The Office of Transportation (OT) is taking an active interest in the Shipping Act review. Our goal is to inform agricultural exporters about the review, discuss potential avenues for industry involvement, and evaluate the impact of the act on U.S. agricultural exports. We are currently gathering data and opinions about impact of the act on agricultural exporters. This publication was prepared to demonstrate the range of opinions held by agricultural shippers and carriers on

these issues. We hope that agriculture can work together and take an informed, active, and positive role.

In closing, I'd like to thank Juan Batista, John Hagen, and Bert Mason of Fresno State University, James Widman of the Port of Houston Authority, Bob Poteet of the Texas Cotton Shippers Association, and Bobby McKown of Florida Citrus Mutual for their help in organizing the workshops.

The Shipping Act of 1984: Focus on Agriculture

Overview

Transportation is an integral part of the export process, one which can contribute as much as 50 percent to the total landed cost of some agricultural commodities. With the advent of new container technologies in the ocean liner industry, and the growth of high-valued agricultural exports in the last decade, agriculture's demand for ocean liner services has greatly increased. Agriculture's need for quality liner service at reasonable rates has generated interest in liner industry regulations, which are shaped by the Shipping Act of 1984. With this in mind, USDA's Office of Transportation organized three Ocean Shipping Workshops. At each workshop, agricultural exporters and carriers presented their opinions about issues and regulations, and their effect on rates and services. This overview includes: a brief glimpse of the major provisions of the act; a discussion of some of the most controversial ocean transportation issues that face agricultural shippers; and a review of Office of Transportation activities in this area.

The Shipping Act of 1984

The Shipping Act of 1984 mainly focuses on liner carriers—ocean carriers that offer regularly scheduled port calls, with vessels primarily designed to carry containerized cargo. The act does not directly regulate independent bulk or break-bulk grain carriers, which typically operate under single-shipper charter arrangements.

The Shipping Act of 1984 allows groups of ocean liner companies to form cartels (also called "conferences" or "rate agreements"). Conferences are granted antitrust immunity, along with ports and marine terminal operators. As a result, conferences can collectively set rates and services, and apportion markets among members. The Shipping Act of 1984 made it easier for carriers to form these conferences. In addition, it eliminated regulatory oversight of the "fairness," or "product competitiveness" of carrier rate-making practices. The Shipping Act allows carriers to enter and exit conferences freely.

The act allows individual conference members to act independent of the conference, in terms of rates and services offered to shippers. This is known as independent action (IA). The act also created the concept of "service contracts" between individual shippers and individual carriers or conferences. Service contracts allow shippers and conference carriers (with conference approval) to enter into agreements whereby shippers obtain rate and service concessions in return for cargo volume commitments. The act allows shippers' associations to deal with carriers as a single negotiating entity. The act was designed to be in harmony with international shipping practices, and the principles of common carriage.

Review Schedule for the Shipping Act of 1984

The Shipping Act of 1984 includes provisions that mandate a review of the legislation 5 years after enactment. The purpose of the review will be to analyze the impact of the act on:

(1) increase or decreases in the levels of tariffs;

(2) changes in the frequency or type of common carrier service available to specific ports or geographic regions;

(3) the number and strength of independent carriers in various trades; and

(4) the length of time, frequency and cost of major types of regulatory proceedings before the Federal Maritime Commission (FMC).

The planned review schedule for the act is:

1989	The Federal Maritime Commission report is submitted to Congress
1989	A 17-member Advisory Commission is appointed to study the impact of the Shipping Act, and conducts hearings
1990	The Advisory Commission will send its report to Congress
1990/1991	Congress will hold hearings on the Advisory Commission report
1992/1993	Congress will deliberate the issues

Major Issues in Ocean Shipping Regulation

Conference Antitrust Immunity

Ocean carrier conferences, ports, and marine terminal operators are exempt from domestic antitrust laws. This provides carriers with the authority to jointly set rate and service levels. The participation in these cartels by U.S. flag carriers is limited. About 70 percent of the members of the outbound conferences serving U.S. exporters are foreign carriers.

Some shippers are advocating revocation of conference antitrust immunity. This would preclude the entire conference system, and could encourage more competition among ocean carriers. However, carriers question whether adequate ocean services could be maintained without the conference system. They feel that open competition might prove destructive, and ultimately lead to industry consolidation.

Tariffs

All conference and nonconference ocean common carriers operating from U.S. shores are required to file tariffs with the FMC. These tariffs include the services, rates, and terms of carriage offered, and are available for public inspection. However, bulk cargo, forest product, metal scrap, and waste paper shipments are exempted from tariff filing requirements. Rebates, or refunds of freight charges as described in the tariff, are prohibited under the act. Despite the prohibition against rebating, several carriers have recently been fined for this practice. The FMC presently is investigating alleged rebating in the Pacific trades.

The use of "pocket rates" also is currently under contention. A pocket rate is a rate discount quoted by a carrier to a specific shipper, that is not filed with the FMC until a later date. The FMC has ruled that this is a discriminatory practice, and requires that carriers can only quote rates that are in effect on the day that the cargo is received by the carrier. A number of shippers are currently urging the FMC to reconsider this decision, arguing that it curtails the ability of shippers to match the rate reductions secured by their competitors.

The current tariff system is voluminous and complex. Most carriers practice "value of service" pricing, whereby each commodity is subjectively rated in accordance with its relative market value. Sometimes, an array of rates are included in the tariff for one commodity, based on origin, destination, and packaging. Furthermore, many commodity rates are based on a weight or volume measure, whichever produces the greater revenue to the carrier. This complexity and can make it difficult for shippers to estimate transportation costs for present and advanced sales.

Accessorial Charges

In addition to the base tariff rate, most conference freight bills include additional surcharges. Accessorial charges such as Currency Adjustment Factors (CAF's), Bunker Fuel Assessments (BFA's), Container Freight Station Charges (CFS's), and Terminal Handling Charges (THC's) contribute an element of volatility in the ocean freight market. These accessorial charges are imposed over and above tariff rates, usually without negotiation between shippers and carriers. Some shippers view these charges as hidden rate increases, which do not reflect the actual costs of the services for which they are levied. Carriers contend that these charges are necessary to recover the various domestic and overseas operating costs associated with transporting cargo.

Independent Action

One of the key provisions of the Shipping Act of 1984 is the mandatory right of independent action (IA). The purpose of this right is to allow conference members to depart from any rate or service item filed in the tariff, without the permission of the rest of the conference. Upon 10 day's notice, a conference carrier may offer shippers a rate that is lower than the conferencewide rate. This new rate must be filed in the tariff, and must be made available to all shippers of that commodity. IA's are frequently inland origin and destination port specific.

The purpose of this provision is to increase rate-making flexibility and help vent competitive pressures among conference members. Each conference member is allowed the latitude to act independently of conference rate-making decisions. Since the passage of the act, thousands of IA's have been filed, as independent action has become an integral part of the liner freight market. Most shippers support the continuation of the mandatory right of independent action.

A major issue associated with IA is the length of the notification period. Shorter notification periods allow carriers to be more responsive to changes in the market. Some shippers support the current 10-day period, while others would like the notification period eliminated. Conversely, many carriers support a 60-day waiting period, so that the conference members can discuss the impact of the IA on the conference rate structure.

Service Contracts

The Shipping Act of 1984 created a new type of contractual arrangement for shippers and carriers, called service contracts. A service contract is an agreement between a shipper and a carrier in which the shipper commits to ship a certain amount of cargo, over a specified period of time, in exchange for rate and/or service concessions. Under present law, conferences may prohibit their members from entering directly into service contracts with shippers. A number of conferences have banned service contracts for several years. However, service contracts are always allowable between nonconference carriers (independents) and shippers.

Many shippers desire the unrestricted right to negotiate service contracts with all interested carriers. Effectively, these shippers would like the mandatory right of independent action extended to service contracts, so that conference management cannot block such agreements. Agricultural shippers frequently forward-contract sales months in advance of shipment, and need to lock in future rates and services. Service contracts are a mechanism for securing future ocean rates and services, to allow forward price quotation. However, conferences maintain that

independently negotiated service contracts would contribute to market instability and undermine the foundation of the conference system.

Loyalty Contracts

A loyalty contract proffers a lower freight rate to a shipper who commits a fixed *percentage* of cargo to a carrier or conference. This differs from service contracts, where a fixed minimum *amount* of cargo is the basis for the contract. Some shippers prefer a loyalty contract arrangement, especially for markets where the future volume of sales is difficult to predict. Because service contracts were banned in some trades, several shippers tried to negotiate loyalty contracts. Some of these attempts to formulate loyalty contracts were blocked by conferences.

In a recent ruling, the FMC determined that loyalty contracts are sufficiently similar in nature to service contracts to allow conferences to prohibit members from writing them. A number of shippers are presently appealing the FMC decision in U.S. District Court.

Confidentiality of Contracts

Each service contract must be filed with the FMC, and the following essential terms must be made public: carrier/conference; destination; commodity; volume; rate(s); and special service features. Under present law, the same rates and services must be made available to "similarly situated shippers." Many shippers, primarily large ones, want confidential contract terms, so that the most effective negotiators or highest volume traders could secure the most favorable terms. However, small shippers may benefit from maintaining the current system of public disclosure of essential contract terms. They can negotiate with "full knowledge" and ask for the rate reductions previously leveraged by larger shippers. Most carriers prefer disclosure of the essential terms of contracts.

There are a number of other issues related to the Shipping Act of 1984, but the Office of Transportation workshops focused on issues of primary interest to agricultural shippers. Port authorities, marine terminal operators, non-vessel-operating common carriers, freight forwarders, and customs brokers are also affected by the act. The FMC is presently reviewing the impact of the act on these sectors of the maritime industry.

USDA Office of Transportation Activities

The mission of the USDA Office of Transportation is to develop and promote efficient agricultural transportation systems to improve farm income and expand exports. OT assists shippers in obtaining reasonable transportation rates, services, and facilities for agricultural products. OT petitions the Federal Maritime Commission (FMC), the Interstate Commerce Commission (ICC), and other federal agencies on issues ranging from transportation industry practices, tariff rates, charges, contracts, and cargo insurance. OT acts as a liaison between the Federal Government, the transportation industries, and the agricultural shipping public. Throughout the last 4 years, OT has received numerous requests for assistance from exporters of cotton, hay, lumber, citrus, vegetables, and other commodities concerning ocean transportation issues.

OT researchers have met with citrus, beef, wine, peanut, wood, and cotton exporters to gather data and opinions about ocean shipping problems facing

agricultural exporters. OT plans to issue a final report that will include an evaluation of the following topics:

- What has been the impact of rate increases and volatility on agricultural exports?
- Should the cartel system be eliminated by removal of conference antitrust immunity?
- How do service contracts, loyalty contracts, and independent actions benefit shippers, by encouraging carrier price and service competition?
- Which mechanisms should be retained in the Shipping Act to maintain the competitiveness of agricultural products in foreign markets?

Ocean freight is clearly an integral part of the export marketing chain. Access to foreign markets can be contingent on obtaining cost competitive ocean transportation. The purpose of the OT Ocean Shipping Workshops was to increase awareness of how ocean liner regulation effects the rates and services available to exporters. OT's final report will address the impact of the act on agricultural shippers and recommend ways to improve the ocean shipping market. OT's objective is to ensure that our Nation's transportation system is a long-term competitive asset to agricultural exporters.

Opening Remarks

James A. Caron
Director
International Division
USDA Office of
Transportation
Fresno Workshop,
May 26, 1988

Thank you for your interest in our program today. The Shipping Act of 1984 is one of the most important pieces of legislation that affects exporters. It determines the structure of the ocean liner industry by allowing carriers to act jointly in setting rates and services. It determines the circumstances under which a shipper can contract for future freight rates or services. It allows shippers to combine cargoes to negotiate for volume-based rate reductions. It determines the legality of many actions that affect the commercial well-being of both shippers and carriers.

Congress mandated that the act be reviewed 5 years after enactment, to evaluate how well it was working. That process has begun, and will continue for several years. Our objective today is to discuss the major issues surrounding the act, and possible solutions to problems.

Why are ocean transport services important? I think that we all understand that exports provide jobs and help pay for our Nation's imports. American agriculture spends billions of dollars annually on ocean freight costs to get our products to foreign buyers. Agricultural exporters have worked hard to gain foreign markets. The level and stability of transport costs directly impact their ability to secure and enlarge those markets. However, shippers realize that carriers must earn adequate revenues to purchase and operate ocean fleets. We are here today to help ensure that a healthy balance is struck, for the benefit of both commercial interests.

We will begin the program with with Peter Friedmann, a recognized expert on ocean shipping regulation. As a staff member to Senator Packwood of Oregon, Mr. Friedmann helped formulate some of the original provisions of the Shipping Act of 1984. He will give us a historical perspective of ocean shipping regulation, and aquaint us with some of the fundamental issues being discussed today.

The Shipping Act of 1984, Its Legislative History and Its Implications

Peter Friedmann
Agriculture Ocean Transportation Coalition
Fresno Workshop,
May 26, 1988

The Shipping Act of 1984 is a highly controversial law, impacting virtually anyone who imports and exports. What is not generally recognized, however, is that the controversy did not begin in 1984, but rather 76 years ago, in 1912.

I have not been involved in ocean transportation since 1912. But, in the 7 years of my involvement, including drafting various versions of the Shipping Act and subsequently representing companies (primarily shippers) impacted by the act, I have gained a perspective of ocean shipping policy, a technical knowledge of the act and Federal Maritime Commission [FMC] regulation, as well as an appreciation of the commercial aspects. I hope to impart something useful to you today.

The Shipping Act story begins with a picture of the structure of business in the United States at the turn of the century, 88 years ago. The oil companies had powerful monopolies and cartels. Railroads were unregulated, uncontrolled, and without competition. Congress deliberated for two decades over whether price-fixing cartels (or trusts) should be banned. Presidential candidate Teddy Roosevelt campaigned as a "trustbuster". The result was a series of major antitrust laws such as the Sherman Act and the Clayton Act. Cartels no longer would be tolerated, price fixing became illegal, and competition was established as the basis of the U.S. business ethic.

But these laws only applied to those commercial activities which Congress could control within the United States. What about international activities, namely transportation? International aviation was not a concern in 1906 or 1912 when the antitrust laws were enacted, but ocean shipping was. Congress immediately commissioned a study to determine whether our new antitrust laws should apply to international ocean shipping. It was a difficult question. After all, we cannot control international shipping as we can control domestic trucking, for example. Our exports are somebody else's imports and vice versa.

The "Alexander Commission" submitted its report to Congress in 1911. It established the following:

- Ocean shipping was divided into two sectors—tramp and liner. Tramp service is the way we move grain, coal, and oil. Ships are chartered or hired on a per voyage basis, much like a taxi you call, which comes to you and takes you wherever you want to go. The rate depends upon where you go. Liner service is regularly scheduled transportation, today largely containerized, which operates like a bus. Be at the scheduled stop and you will be taken to the scheduled destination, for a rate which is published and is the same for all.
- None of our trading partners had enacted antitrust laws. Competition was not the basis of their economic systems, and cartels and monopolies were acceptable to them.
- There was no Government regulation of rates and services in either bulk or liner shipping.

- In liner shipping there was a form of self-regulation, the "conference system." That conference system was really nothing more than a number of price-fixing cartels formed by the carriers in each trade. Furthermore, the system involved *closed* conferences in which member carriers could prevent competitors from joining their cartel, and would jointly drive new competitors out of the trade. There were no "independents."
- Finally, the conference system was directly contradictory to the newly enacted antitrust laws which controlled the activities of all U.S.-based industry.

Congress wrestled with questions related to this problem for 3 years: "How could we impose our system of antitrust and competition upon our trading partners?" "Was the conference system a desirable means of regulating ocean liner shipping and assuring dependable service?" "Should the U.S. attempt to regulate rates charged by the carriers to protect the shipping public?"

The Shipping Act of 1916 attempted to protect the shipping public, but in harmony with the existing system of ocean transportation worldwide. To protect the shipping public, a common carrier system was developed in 1916. Carriers were required to file their rates at a new Federal regulatory body, which would review the rates. An exemption from the antitrust laws was included in the 1916 Act, to allow conferences to exist—although they were required to be open. Further, the new Federal regulatory body—the forerunner of the Federal Maritime Commission (FMC or Commission)—would review each agreement to form a conference to ensure that the proposed agreement conformed with standards set forth in the act. Finally, the FMC would monitor the activities of the carriers to ensure that the rates published were actually being charged (no rebating) and that the carriers did not engage in various prohibited acts (fighting ships). In sum, the 1916 Shipping Act allowed the conference system to continue, but with some regulation.

Over the next six decades a series of court decisions, an increasingly complex scheme of regulation, and the emergence of intermodal technology rendered the 1916 Act unworkable. Instead of competing on the water, carriers used the FMC regulatory process to delay their competitor's proposed agreement, sometimes for years. Conferences could not offer special flexible service to individual shippers.

In 1980 (This was when I became involved) Congress began the process of reviewing and revising the 1916 Act.

In the 1980's we found the situation in ocean transportation was pretty close to that found by Congress back in 1912. Our trading partners still did not embrace our concepts of competition, they still did not regulate ocean shipping. But a few things had changed: (1) the emergence of intermodalism; (2) the deregulation of the rail and truck industry so as to better serve shippers (primarily large shippers); and (3) international airline treaties.

The first questions were whether we still wished to regulate ocean shipping, and whether to allow the conference system to continue. Did we wish to follow the example of international airline regulation, in which an airline can only enter a trade if the governments of the countries served negotiate a treaty and agree upon the routes, number of flights, and often the times of the flights, the equipment used, and even—in some cases—the rates charged?

The existing ocean conference system may have substantial faults, but even it allowed for free entry of new carriers, and freedom to select routes, rates, frequency of sailings, etcetera.

At the time, it was concluded that it would be extremely difficult for the United States to prohibit conferences when every trading partner allowed them. (Today I am not so sure that is correct.)

What, then, were the objectives of the 1984 act? The carriers sought:

1) to streamline the FMC regulatory process and clarify the antitrust immunity;

2) to allow growth of intermodal efficiencies.

Over the course of the legislative process shippers became increasingly involved, to the carrier's surprise and chagrin. Shippers were amenable to the carrier objectives just mentioned, but focused on another, far different, objective: to instill more competition into the conference system and flexibility to meet shipper's needs.

Now you might ask, "how could Congress confirm the conference (cartel) system while instilling competition?" It is a good question which can only be answered by saying that we sought to balance the interests of carriers and shippers. The result was more freedom to carriers to form conferences, but greater ability of shippers to weaken conference control over price and service. For the first time, independent action was made mandatory for tariff items (on short notice, as well). For the first time, service contracts were specifically recognized and, in fact, encouraged. Shipper's associations were, for the first time, recognized and protected. Finally, certain commodities, primarily forest products, were exempted entirely from tariff filing and enforcement requirements, thus, theoretically, weakening conference control over forest product rates.

In fact, following the President's White House signing ceremony, many dubbed the '84 Shipping Act "the *Shippers Act.*"

What has happened since then? Neither shippers nor carriers have been satisfied.

Let us focus on the conference of greatest concern to agricultural exporters from the west coast—the Transpacific Westbound Rate Agreement (TWRA). This will be appropriate not only due to your immediate commercial interests but because the TWRA has been impacted dramatically by the reality of the competitive marketplace, while also being the conference which is consistently the most aggressive in attempting to use the act to eliminate or at least control the market forces. Virtually every aspect of the continuing carrier/shipper debate is most acute in the westbound Pacific trades.

Within months of enactment of the 1984 act the Pacific carriers used the streamlined regulatory procedures to form a "superconference"—the TWRA. The TWRA used the act's clarified intermodal authority to offer intermodal rates. The growth of intermodalism and double-stack trains has been phenomenal since 1984, with tremendous impact even on domestic (primarily westbound) rates.

In early 1985, the TWRA tested the act again. Under the 1916 Act, the FMC could review rates to determine if they were "detrimental to the commerce of the United

States.'' This test was eliminated in the 1984 act. The TWRA tested its ability to control (or rather ignore) transportation marketplace realities.

It announced new minimum box rates, effective upon 30 day's notice. In some cases, rates which had drifted to all-time lows due to rampant overcapacity would be doubled or more. The suddenness of this increase, which could not be justified by market demand, shocked exporters of price-sensitive products. The Pacific Northwest lumber exporters demanded attention.

At a hearing conducted in 1985 in Oregon, Senator Packwood noted the abuse by the TWRA of its price-fixing authority, its lack of sensitivity to its customers needs, and strongly alluded to the benefits of competition and the dangers of cartels (views which the lumber shippers strongly applauded). The Seattle Times editorialized that cartels were abusing U.S. exporters—forcing them out of foreign markets. Meanwhile, ocean carriers and the TWRA were decrying the all-time low rates, which they blamed upon the Shipping Act, and which forced them to institute ''revenue recovery programs'' so quickly. Finally, there was evidence that the TWRA members may have secretly agreed not to take independent action, in an effort to make the announced rate increases hold. The increases never took hold, and rates drifted even lower.

Let's step back, after this flurry of activity. Did the act work? The answer is, I believe: Not smoothly, but it did work.

First, why were rates so low that the TWRA felt compelled to announce such a dramatic rate increase? The simple answer is that there were too many ships chasing too little cargo. But the more important answer is that the act does not insulate carriers from the marketplace. The TWRA effort to control rates failed, its efforts to raise rates failed. Not because of congressional pressure, but because the act does not give the carriers the tools they needed to ignore the market.

The act prohibits closed conferences, mandates independent action on short notice, encourages service contracts, and protects independent carriers from predatory practices by the conferences. Each of these provisions of the act fosters competition between the conference carriers, and by outside (independent) carriers.

The FMC investigated the TWRA for violation of another of the act's limitations on cartel power—prohibition of secret agreements not filed at the Commission. While no violation was proven, the TWRA eventually ''settled,''
paying a significant sum to the FMC.

Does this experience mean that there are no problems with the conferences? Absolutely not. The injury to exporters who were forced to stop shipping prior to TWRA withdrawal of the increases and entry of break-bulk alternative carriers was substantial, even if not long lasting. This disruption and injury would not have occurred if the TWRA conference had not existed. The low rates in 1985 and 1986 and the higher rates in 1988 would have occurred without the conference, reflecting the increasing volume of exports and increasing demand for container space. Did the conference maintain rate stability? Not at all. Rates followed the marketplace. Did the conference maintain carrier stability? Not at all. U.S. Lines Company went bankrupt, Lykes withdrew from the Pacific and the Japanese lines pursued reorganization.

What are the current issues facing carriers and shippers?

Service Contracts

Recall that during development of the 1984 act carriers adamantly opposed the inclusion of service contracts in the statute. They felt that such contracts would severely undermine the conferences' control over cargo, allowing certain aggressive carriers to gain exclusive right to carry a shipper's cargo. They also recognized that large-volume shippers would demand lower rates, thus driving rates downward. Volume discounting is a fact of life in most transportation modes as well as virtually every other commercial marketplace—but is an undesirable concept to conferences.

As a result of the controversy over service contracts, the act compromised on the issue. Service contracts would be allowed, but the mandatory right of independent action which applies to tariffs, would not apply to service contracts.

Thus, a member of a conference may reduce its rate on grapefruit regardless of whether the other conference members wish him to do so. But a conference member may not sign a service contract without conference approval. The conference may prohibit him from signing (in which case the only option left is for that carrier to resign from the conference, if he wishes to sign), or the conference may adopt the contract on a conference—wide basis, with every member eligible to carry the cargo.

Some carriers and conferences have embraced the service contract concept. Evergreen has done so, obviously, and so has ANERA (the Pacific eastbound conference). The TWRA, typically, has prohibited IA on service contracts, and *not one* has been signed or adopted in over a year. It almost appears that the TWRA is refusing to seriously negotiate contracts, and the Chairman takes pride in the elimination of contracts.

As if this were not enough, the International Council of Containership Operators (ICCO) has filed a petition at the FMC seeking to reduce the commercial usefulness of service contracts. The ICCO petition seeks:

(1) mandatory liquidated damages set by the federal government

(2) prohibition of most-favored-shipper clauses (where the contract rate follows the lowest rate offered by the contract carrier)

(3) prohibition of "Crazy Eddie" clauses, where the contract rate follows the lowest rate available in the trade.

The FMC has responded by issuing a proposed rule granting the prohibition of Crazy Eddie clauses. I filed comments at the FMC, stating what I think is the common shipper view. The basic shipper argument is that service contracts were intended to be commercial contracts, freely negotiated. If carriers are presented by shippers with a provision they do not like, they should simply refuse to sign. There is no need for the Federal Government to protect carriers (who enjoy cartel price-fixing authority) from themselves.

At the same time, I have indirectly requested the FMC to investigate whether the TWRA's "'elimination" of service contracts constitutes a violation of the Shipping Act (prohibition against "refusals to deal"). This is a difficult question, about which the TWRA feels strongly and which shippers are only now beginning to address.

The bottom line is that the carriers which opposed service contracts in 1984 are now seeking limitations at the FMC, and will seek further statutory limitations before Congress. Conversely, shippers wish to maintain service contracts and expand their usefulness through IA.

Loyalty Contracts

Another issue, which is emerging as perhaps the most controversial since enactment of the 1984 act, is the matter of loyalty contracts. Loyalty contracts differ from service contracts in that they involve a percentage of the shipper's container volume (80 percent, or 100 percent for example) as opposed to a specific number of containers. An important difference between loyalty and service contracts is now being contested at the FMC. We are arguing that the mandatory right of independent action *does* extend to loyalty contracts. The conferences vehemently argue to the contrary, claiming that to extend IA to loyalty contracts would result in a diversion of substantial volumes of cargo away from conference control. (This is the same argument made on service contracts.)

The TWRA, in its typically aggressive fashion, has banned loyalty contracts.

The FMC has responded by issuing a show-cause order directing the conference to show why it is not in violation of the act. Because shippers, particularly large shippers, believe that IA on loyalty contracts will provide significant additional negotiating opportunities, we have filed comments in support of the FMC's position.

IA will make loyalty contracts available regardless of conference opposition. Loyalty contracts may provide a very attractive option for those seeking a discount rate from a conference carrier who otherwise might be precluded from signing a service contract by the conference. It is precisely because of this that the conferences are arguing so vigorously against the FMC's interpretation, and I think this likely is to be the first matter in which the FMC is called upon to defend itself in court.

There are many other issues:

- the shift from "per container" to weight-based rates and the TWRA's proposal that the shipper certify the contents and rates.
- the imposition of "currency adjustment factors" which are unjustified by the actual currency fluctuations.

In general, these are simply means by which the TWRA is seeking to increase revenues. I would note, however, that the truck overweight issue has focused the [attention of the] Federal Highway Administration, and the Federal Maritime Commission on the carriers. Some carriers are being accused of knowingly carrying overstuffed containers. The FMC is encouraging conferences, and particularly the TWRA, which carries commodities that lend themselves to overweight containers, to institute some policing action. A close scrutiny of some of the all-quantity (AQ) rates reveals that some are calculated, in fact, to reduce loads to safe or legal weights, while others are designed primarily to raise revenue by increasing container volumes. I believe this is the case for frozen french fries, for example.

What is the Current Situation?
Westbound rates are up, because demand is up and available space is fully booked, particularly for refrigerated containers. Eastbound Pacific rates are down, because demand is down. Service contracts and other volume discount arrangements are playing an important role, accounting in some trades for a majority of the cargo.

Have the conferences worked with their customers to be responsive to their needs? That depends upon the conference; some are very good, others are terrible. The bottom line is that the marketplace—despite conference initiatives to the contrary—controls the price of ocean transportation.

Meanwhile, back in Washington, DC, the carriers are increasingly active at the Federal Maritime Commission and in Congress to address (shippers may say "undermine") the so-called shipper's provisions in the act:

- seeking limits on service contracts;
- prohibiting IA on loyalty contracts;
- eliminating so-called "pocket rates";
- extending the required notice period to a conference by a carrier planning to take independent action from the present 10 days to 60 days.

Under the 1984 act, reflecting congressional discomfort with the continuing grant of antitrust immunity to ocean carriers, the FMC is required to report to Congress in 1989 on how the act is functioning. The FMC has convened an Advisory Committee to help prepare the report. We were able to gain a seat [on the committee] for a member of the agriculture community.

In summary
It is important to focus not only on the particular TWRA directive of the moment, but also on the overall structure of our ocean transportation system. I hope this has been helpful in providing an overview as to why we have a Shipping Act, and the issues which Congress attempted to address in such an act.

Chapter 2 - Shippers' Perspectives

Ocean Shipping, International Marketing, and Western Citrus Shippers

Perry Walker
Vice President
Riverbend
Fresno Workshop,
May 26, 1988

Not long ago, California and Arizona citrus shippers enjoyed a balanced trading relationship with their Asian partners; now things have changed. Quietly and effectively, [these Asian partners] have gained an advantage that could prove to be disastrous for the western U.S. citrus industry. A short comparison of the prior trading system to today's shipping practices is necessary to understand how much the business has changed and how detrimental the current situation is to the western citrus industry.

Until the 1980's, shippers of western U.S. citrus sold their products on a landed cost basis. Under these terms, shippers negotiated all elements of the transaction including the cost of fruit, documentation, inland transportation, handling, and ocean freight.

This was good business. Each shipper had numerous opportunities to develop a comparative advantage by negotiating rates, terms and services with inland truckers, freight forwarders, and the steamship lines. This dynamic environment was more competitive and the industry was more efficient.

Today's business is much different. For example, the Japanese citrus importers now buy their products free-on-board (FOB) at the packing house or delivered dockside. Since the buyers negotiate all the variables, they force shippers to compete on the FOB or cost-of-goods level.

This hurts the western U.S. industry in two ways. On an FOB basis the Japanese can lower producer profit margins by "beating down" the FOB price among industry competitors. Additionally, because the California/Arizona production costs are the highest in the world, on an FOB basis, their market share is in jeopardy from third country suppliers who enjoy lower production costs.

Conference structure and practices are other major differences. Japanese ship lines are more dominant now than before. On an FOB transaction, the Japanese buyer chooses the carrier. Since they prefer to book their orders on Japanese flag ships, the "Japanese connection" controls the trade.

On top of this, the conference has become more heavy handed. Cartel abuses grow as their economic and political power solidifies. Recently, the conferences have made concerted efforts to eliminate or severely limit many existing beneficial shipper options. They want to limit service contracts, prohibit loyalty contracts, stymie independent action, increase revenue by shifting from "per container" to weight-based rates, and impose unjustified "currency adjustment factors." Finally, this past spring they attempted to mandate shipper certification of container weight/content.

There are many reasons why this situation exists. First, the western citrus industry did not recognize, nor counter, the aggressive Japanese buying strategy; instead, the citrus shippers embraced it. When FOB export sales were initiated, by and

large, the industry saw them as an opportunity to simplify complicated sales, lower administrative costs, reduce risk, and get rid of some "headaches".

Also, the Japanese orange import quota (IQ) system supports the new way of doing business and contributes to the situation. Under the Japanese quota system, only IQ holders control the entire transaction. They negotiate price, choose the supplier, carrier, arrival time, and destination port. In retrospect, the shift of control to the Japanese was easy, almost natural.

The Shipping Act of 1984 did its part in shifting the commercial balance. Under the new law, the carriers were given extraordinary powers that changed their relationship with the FMC and shippers. As under prior legislation, the carriers can discuss and fix rates, allocate traffic, and control competition; but now conferences enjoy another benefit. The 1984 act strips the FMC of its direct oversight powers of conference action. For example, the FMC no longer has the authority to disapprove agreements between shippers, ports, or competing carriers.

Prior to 1984, shipper challenges to conference action were taken to the FMC for a hearing. Now such complaints have to go through the court system which is time consuming and costly. This practical limitation effectively eliminates criticism of the conferences, Government oversight, and perpetuates the conferences' arrogance and abuse.

Despite this situation there are commercial and political solutions available. Trade with Japan again can be more competitive, but shippers must make it so. They have to reestablish agricultural trade on a cost, insurance, freight (CIF) basis. This is more possible since Japan is now phasing out its import quota system for fresh oranges and will terminate it in 3 years.

Also, shippers must participate actively in the Shipping Act review process. Unlike the former legislative experiences, agricultural shippers now have an opportunity to participate in rewriting the rules that control ocean transportation.

The shippers' agenda should include the following items: (1) establish the mandatory right to independent action on service contracts; (2) keep the terms of these contracts secret; (3) preserve the right to sign loyalty contracts: and (4) ensure that the shipper's options for independent action are protected.

Finally, shippers should take advantage of the beneficial features of the current legislation and form a shipper's association. Such negotiating groups can counter the conference strength and establish more favorable rates and service. Prior to 1984, shippers formed effective groups under the Webb-Pomerene Act.

World trade is changing rapidly. If western U.S. citrus shippers are to remain globally competitive, they must control every aspect of their business. In recent years, they have abrogated too much control to foreign buyers. To further damage their position, the Shipping Act of 1984 has permitted carrier conferences to dominate shippers' options. As a result, the competitive edge enjoyed in the past has been eroded and only aggressive action can correct the imbalance.

If shippers fail to act, however, their position will deteriorate even further. Foreign buyers will increase their profits by dominating purchasing agreements. The carrier

conferences, for their part, will lobby Congress for stronger cartels and will gain greater control over the ocean shipping industry.

On the other hand, if the citrus shippers take the initiative, they can meet the challenge and regain their competitive edge, expand trade, and increase profits.

Ocean Transportation Problems That Necessitate Agriculture's Involvement in the Shipping Act Review

Phil White
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Houston Workshop,
Oct. 27, 1988

I will begin by stating that agricultural exporters must be active participants in the review of the Shipping Act of 1984.

In [that] act, Congress agreed to reduce regulation of the shipping industry, the objective being to better balance the needs of shippers and carriers alike.

Deregulation, with responsible participation by both shippers and carriers, is a positive change. We have all worked through, and adjusted to, the Staggers Rail Act of 1980, and the total deregulation of the trucking industry. This transition has not been easy. The results, however, have been very gratifying.

In my opinion, our domestic rail and truck carriers are much stronger and more viable than they were 6 or 8 years ago. Freight rates charged for shipping agricultural products are more realistic today than in the past.

Responsible U.S. shippers and carriers have more knowledge and respect for each other's needs, costs, and concerns than they have ever had. We are doing business together in a nonregulated, "free enterprise" atmosphere, and it is great.

The 1984 Shipping Act has provided us the opportunity to achieve this same success in the ocean shipping industry, but we are not achieving it.

Excel Corporation is very concerned about this lack of achievement. We are a large-volume producer and exporter of fresh and frozen beef and pork products. We must have the ability and the freedom to conduct business with dependable, viable, and rate-competitive ocean freight carriers.

Like most agricultural shippers, a high percentage of our exports are sold though forward-contracting. Contracts are written specifying delivered price and agreed-upon delivery dates, which can be 6 to 12 months forward from date of sale. Dates of delivery are impacted by the importing countries' licensing dates and product quota dates, as well as contract sales terms.

With these terms of sale, it is imperative that we have some method of obtaining rate stability and committed equipment availability. This is true not only for Excel but for the entire U.S. meat industry, if we are to remain a viable competitive country in the world meat market.

The 1984 Shipping Act has provided that opportunity through the "right of independent action" by individual carriers, coupled with negotiation of a service contract between a shipper and a carrier. Unfortunately, it is not working.

The most important aspect of the 1984 act is the carriers' "right of independent action." That right is a vital pro-competitive reform that allows individual carriers to

respond to rates and service needs of a shipper. Within the act, the carrier may respond either through a tariff change or through a contract. The right of independent action is the shipper's only protection from the exercising of market power by conferences.

The ocean freight conferences, however, require that all contracts, service or loyalty, written by a conference member must be written with the conference. This is not the intent of the act.

When a contract is written with a conference, each member is allowed to vote for acceptance or rejection of the contract. In many cases, some of the conference members are not even capable of transporting the shipper's product.

Our company has written two time/volume contracts with the Gulf European and the Gulf U.K. Conference. In both instances, carriers who do not have refrigerated containers were allowed to participate in establishing price levels and in voting to accept or reject the contract. This is wrong.

The situation in the TWRA is worse. The TWRA has banned the use of service or loyalty contracts by their members.

In October of 1987, the U.S. Department of Justice appeared before the FMC to oppose the TWRA action which prohibits members from taking independent action to enter into loyalty contracts. The Department stated that "It is contrary to law, and it undercuts one of the primary pro-competitive reforms of the Shipping Act of 1984." The TWRA still arrogantly refuses to allow its members to write contracts. As agricultural exporters, we must demand that this situation be changed.

The intent of the act was to reduce regulation. The act has relieved the FMC of its oversight powers of conference action. The FMC no longer has the authority to approve or disapprove agreements between shippers and carriers. What began as reduced regulation has evolved into total regulation by ocean freight conferences. The shipper is the loser. Today, if a shipper has a complaint, it must go through the court system. Previously, I have stated the total disregard that at least one conference had for a decision declared by the Department of Justice. Realistically, shippers are at the mercy of the conferences.

As previously stated, Excel Corporation must have some method of securing rate stability and an adequate supply of equipment to fulfill our export contracts. We have achieved this for exports to Europe and the United Kingdom through the willingness of one loyal carrier in the Gulf conference. We feel this agreement is beneficial to both parties. We feel it would have been more beneficial without the interference of the nonparticipating conference members who were allowed to vote on the agreement.

However, our largest export market is to Japan and other Far East countries, but in this area we are totally vulnerable. We face a daily risk of rate increases, of which we have had four in the last 10 months. The last increase was $28 per ton on products that we had previously sold for delivery. These arbitrary freight rate increases, which are imposed after we have contracted our sales in advance, can reduce or eliminate profits.

We also face a more chilling risk of not having an adequate supply of equipment to meet our contract requirements. This can lead to penalties of up to $200 per ton, loss of customers, and severe market loss. Our goal is to be the most reliable supplier in the markets we serve. We can not achieve this goal without the security of competitive rates and committed equipment availability. We are not alone; other U.S. meat exporters are in the same position. There are carriers willing to make contractual agreements with us. They are banned from doing so by the TWRA. This ban is in direct violation of the act.

I realize there have been irresponsible contracts written in the past by some carriers and shippers. I also firmly believe that there are several carriers who can develop a confidential contractual agreement with our company which will meet our rate, service, and equipment needs, and which will be agreeably compensatory for the carrier.

We firmly acknowledge the carriers' need for adequate compensation, and I feel we know how to do that. We have negotiated with more than 60 motor freight carriers to haul our fresh meat products. We move approximately 1,400 full truckloads a week. Other than our intrastate movements, they all move under contract. Sixty-five to seventy percent of our rail shipments move under contract. The contract system works.

We are also concerned about accessorial charges such as the Container Freight Station Charges (CFS's), the Terminal Handling Charges (THC's), and the Currency Adjustment Factors (CAF's). The THC in the TWRA has increased 60 percent in the past 8 months. Everyone's costs rise and sometimes [these costs] have to be passed along to customers. But how can they justify raising the THC from $432 to $632? I'm sure nobody's costs went up that much. Furthermore, the THC's are the same in Los Angeles, Oakland, and Seattle. There are several container freight stations in each area. I am confident that some of them are more cost-efficient than others. Why can't the shipper select the most cost efficient operator and negotiate an agreement? THC charges have also risen dramatically in the Gulf and Atlantic Conferences. I am going to take a chance and ask Pat Hanemann of Dole Citrus Company how much he pays for THC. The answer is that he is charged almost twice as much to lift a box [ocean container] of pineapple as we are to lift a box of meat. Can someone tell me why?

The CAF also is very concerning. I have seen the formula but I seriously question its validity, and I question its application. The conferences select the base point of exchange from which the formula is developed and that is 235 yen to the dollar, which was the exchange rate in 1986. Since then, the dollar has lost 50 percent of its value, but the CAF has increased 355 percent.

The CAF has become a major item in our total export cost. In my opinion, the conference-controlled THC, CFS, and CAF charges we have today are simply artificial rate increases. The CAF seems to have become a pendulum that is attached to a fulcrum that allows it to only swing upward.

Our U.S. meat exporting industry is at an extremely critical point. The Japanese Government has agreed to relax their quota restrictions. We are facing a real opportunity to increase our export volumes. This opportunity can be mitigated easily with continuing increased rates, THC, and CAF charges coupled with an uncommitted supply of equipment. We already have experienced a decrease in our shipments to Europe and the U.K.

In conclusion, I must clarify that I have many good friends in the ocean freight industry. I enjoy doing business with them. I have discussed these same issues with them. As agricultural shippers, we must participate in the review of the 1984 Shipping Act. We should also request the FMC to monitor port costs, namely THC and CFS, as well as the CAF charges. In fact, I feel the FMC should establish the validity of the CAF, and if it is a necessary charge, then the FMC should establish and monitor the CAF. Above all, we must demand that the "right of independent action" and the opportunity to develop contracts be returned to the individual carriers.

The Shipping Act Affects Your Business

Sally Tabb
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Lakeland Workshop,
Feb. 9, 1989

On behalf of the Southeastern Peanut Association and Tri-State Export Corporation, I am honored to be able to share our views on the Shipping Act of 1984 as an industry. I would like first to give you a brief idea of our industry's export market, some of the problems we are facing, our response to some of the provisions of the Shipping Act, and, finally, why we think it is important to participate in this review process.

U.S. peanuts represent a multibillion dollar industry with exports accounting for approximately $200 to $300 million in revenue annually. Peanuts are grown in three main areas: the Southeast, the Southwest, and the Virginia-Carolina region; and, primarily use the South Atlantic ports for exporting cargo. Major export markets are northern Europe, specifically The Netherlands, United Kingdom, and West Germany, as well as Spain, France, Portugal, Italy, Japan, and Australia. Our stiffest competition comes from China and Argentina and possibly, this year, from India.

Our farmers' stock prices are Government supported and we have a domestic production quota. We harvest one crop each year and, since domestic deliveries are virtually guaranteed under the support price system, any shortage or increase in production falls into the export market. This inconsistency in supply creates difficulties in marketing our product since we often sell peanuts as much as a year to a year-and-a-half in advance of deliveries. Currently, we have sales on peanuts that are not yet planted. You can imagine the problem of trying to project freight rates for December of 1990.

We have seen many changes in our industry since 1984. Extremely volatile markets over the past 4 years have resulted in the formation of two Webb-Pomerene groups, making an already small industry even more concentrated. We estimate that about 25 companies currently are responsible for all the export tonnage. That tonnage figure has increased from 14,906 twenty foot equivalent units (TEU's) in 1983 to a high of 24,400 TEU's in 1986 back to 18,300 TEU's in 1988. During the same period of time, freight rates have gone from roughly $1,120 per container in 1983 to $650 per container in 1987 and at present are $850 per container.

Having given you this much general information on our commodity, let me outline some of the current issues and problems that face us as agricultural exporters.

(1) Currently, we sell the major portion of our exports on a free-on-board (FOB) or free-along-side (FAS) basis. We want and need to regain control of our shipments and move back to a cost, insurance, and freight (CIF) basis for a couple of reasons. First, because we are required to furnish the Government

with proof of export on each container we ship, this proof consists of, among other documents, a signed and dated ocean bill of lading. Without this document, we are subject to stiff Federal penalties. As a result, our financing institutions are "encouraging" us to return to a more "shipper controlled" type of sale. Most of you probably realize how difficult it is to obtain that document on FOB and FAS sales.

(2) A second problem we encounter is that with narrowing price differentials between U.S. peanuts and those of other origins—the crops of which are harvested much earlier than those in the United States, we must be in a position to sell forward contracts on firm delivery prices. We struggle to project accurate long-term freight rates on both inland and ocean transportation. Due to the ability of some foreign buyers to negotiate long-term service contracts, our buyers are now unwilling to buy on a contract which includes a "freight variation" clause. We have to find a way to get rate and service commitments from our carriers for extended periods.

In light of these problems, what aspects of ocean shipping should be changed? I believe if there is one word we as an industry would like to recommend as an approach to the review of the Shipping Act, it would be "compromise." Overall, our industry is not opposed to conferences and we do not advocate the elimination of conferences. However, we do not feel that the level of responsiveness between shippers and conferences is high enough, and it is our opinion that the present situation is not equitable for both parties. We feel that some compromise is in order on the issues of service contracts, independent action, and tariff structures.

Service Contracts

Our industry unanimously agrees that we must have the right to negotiate service contracts and that conference members must be allowed the right of independent action on service contracts. There have been some service contracts negotiated by peanut shippers over the past 4 years. However, the majority of those few contracts were negotiated with independent carriers. We feel that service contracts would afford us the opportunity to regain control of sales which almost totally have reverted to an FOB basis. We also feel that our needs can best be met by allowing a conference member to negotiate service contracts independent of conference management. Reluctance on the part of conferences to negotiate service contracts with our shippers has resulted in our being unable to guarantee deliveries within contract terms. It prevents us from being able to aggressively promote "shipper controlled" sales.

Independent Action

In order to explain how important the shipper's option for independent action is to us as peanut exporters, it is necessary to look at past rates. After the passage of the act, European trading companies entered into volume service contracts with independent carriers. At the same time, they sold short into the European consumer market, almost completely cutting off that market to U.S. peanut shippers. In fact, the tremendous savings realized on ocean freight enabled these [foreign] dealers to discount the FOB price that U.S. shellers would have charged the consumer. This ensured that the dealer was the "only game in town" and allowed him to name his price. The result was that most peanut exports were controlled by European dealers who shipped on independent carriers. The problem was twofold. U.S. exporters had lost their consumer market and conference lines [had] lost peanut shippers. After 1985, in an effort to regain peanut exports,

conference lines were then willing to listen to shippers' requests for competitive rates and for the past 3 years, some conference lines have taken independent action to match service contract rates. Slowly, U.S. peanut exporters are regaining lost markets, cargo is being carried by conference lines, and even freight rates are increasing.

Tariff Structure
Our industry is dissatisfied with the current tariff structure. The confusing combination of a per-weight rate with add-on charges to some ports and all-in, lump-sum rates to other destinations may result in miscalculated costs and diminished profits. Our commodity is fairly standard on a weight basis and could be easily adapted to a lump-sum per-container tariff structure.

We believe that by negotiating on these issues, both shippers and carriers can benefit and that the result can be a win-win situation for everyone.

Why is it important for agricultural shippers to be involved in the review process?

First, if you are an exporter, the act seriously impacts your business. We know that the act has affected rates and rate volatility, which directly or indirectly affects the exporter. Some exporters may be involved more directly in some of the shipper provisions than others, yet we all have a stake in the outcome. Through this review process and the efforts of the USDA Office of Transportation, we have the opportunity to make our opinions heard through the appropriate channels. By concerting our efforts, the agricultural community can make a forceful statement.

Second, by participating in workshops like this, we may be able to reach a better understanding of the issues of which we previously were unaware, such as shipper associations. Efforts to interact with conference representatives in this arena can only help to work toward negotiating benefits for both parties.

And last, we need to be clear that in vocalizing our opinions, we do not ask for meaningless concessions. We must be clear about what we want and promote real issues based on real facts to meet real needs. We have to be the ones to say what we need in order for our voices to carry weight. Our industry is currently involved in compiling the results of a survey on the Shipping Act which we mailed out last month. Once the survey is complete, we will have statistics documented to substantiate our opinions. We encourage you to become involved with this process and make a contribution toward increasing agricultural export markets.

Negotiating With Conferences

David Dubois
President
Brittain International
Freight Forwarders
Houston Workshop,
Oct. 27, 1988

I wish to thank you for this opportunity to present the views of the association that I represent here today, the Texas Citrus and Vegetable Association, in regard to the review of the 1984 Shipping Act.

When thinking about the act review, I was reminded of a Cajun story—being named Dubois, I have to have a Cajun story—about a group of men that went out to hunt wildcats down in the Louisiana swamp. They, of course, took their dogs and their guns along with them. Sure enough, sooner or later they "treed" a wildcat, [but] nobody could get at him. The dogs were raising cane around the bottom of the tree, so, finally, one of the braver ones named Paul said he would climb up in the tree and kick the cat out. So he climbed up the tree, and he

climbed out on a limb and they all stood down there, trying to see where he was; and all of a sudden—there was all sorts of screaming, yelling, scratching, and noise going on up there.

They yelled up there and said, "Paul! Paul! Kick him out of the tree!".

Paul replied back down, "No! Shoot up here among us! Shoot up here among us!"

They said, "No. We might hit you, Paul."

And, he says, "Hey! One of us needs relief!"

The Texas Citrus and Vegetables Association represents not just the Rio Grande Valley in south Texas, but it is a Texas-wide organization. The membership comes from west, north Texas—all over.

The association is involved with produce, all for domestic consumption. What I'd like to deal with today is the grapefruit that we're very proud of from our valley. It's our largest export crop.

When we were talking about exporting today, I heard someone say that they were exporting to Dallas! Well, we have exported to Dallas! Our first export to Dallas from the Rio Grande Valley was garlic in 1905. That's when the railroad finally came in there, and we were able to export to Dallas. Our first real export from south Texas was beets in refrigerated break bulk going to Rotterdam.

Our perspective, in this discussion, primarily is focused on the export of grapefruit. The views that we have, though, could apply to other crops, such as our marvelous onions and carrots from the valley.

As you will see, we feel strongly about certain issues. We have sought the conferences' views on many of our issues. We are seldom provided with information about conference views and activities. Individual steamship lines can try and tell us. They do try to tell us what is going on; but it is the conference system—the conferences that we deal with—that are giving us major problems.

Additionally, please understand that we had a devastating freeze in 1983. We probably lost 60 percent of our citrus crop in the valley. We have hurricanes visit us quite often. So, bear in mind that we're trying to re-establish ourselves in the market after 5 years of nonparticipation.

The conferences that we deal with have shown a lack of responsiveness and understanding, or willingness to compromise with us on pricing, on service, on utilization of their expertise. However, individual steamship lines, sales, operations, and equipment control have been very cooperative. There are a number of you in the audience that are very close friends of mine in the steamship lines, and have been very cooperative with all of us in the valley, and come down and try to explain what's going on.

But it seems that when the steamship lines get together in a conference, they usually close the door, lose their humanity and their perspective, and actually conspire to "put it" to us. It's as if they feel that they're the only game in town.

The independent [ocean carriers] don't have refrigeration. They're getting some, but they don't have it right now.

We're told by the conferences that we are partners in this operation. The exporters and shippers are partners with them. We show them our true costs of our production, our marketing, our sales promotion and they reveal their rates—take it or leave it. There is no discussion with the conferences.

When we want to put in a rate request to a conference, it's usually done by Telex to the conference. An individual shipper must do it. He has to go the conference and say, "All right, I would like to have a 40-foot reefer container for this commodity, going to this destination, and I expect this volume." However, we can't "caveat" the request. We do have freezes, we do have hurricanes, and so on. Of course, the exporter must be familiar with all of the idiomatic expressions [regarding charges] the conferences use: "terminal receiving," 'container handling," "currency adjustment," port congestion," "war risk," "container rental," wharfage here, wharfage there, and on and on.

It's not that we aren't sophisticated enough to understand that, but if you miss crossing one "t" or the dotting of one "i" you're held to what you requested. We don't get feedback from the conference saying, "Hey, did you take into consideration container handling? war risk? things of this nature."

The act definitely has helped to show who can do what to whom, and how often. It's a good start only. More regional input and fine-tuning from shippers and individual steamship line representatives is needed. Representatives from both factions need to be willing to look at the other side's virtues and contributions without prejudice.

If this is not done, I feel that the future is going to involve decisions based on subjective information, and we're going to have to use political leverage; be it political action committees, the Federal Maritime Commission, or congressional representatives. If we do get down to that, I can guarantee you that we have some good guys on our side: Senator Gramm; Senator Bentsen; Congressman Kika de la Garza; and Congressman Solomon Ortiz. These gentlemen in agriculture are as big as our 1015 onion, but they're not as sweet, especially when considering topics which concern us such as service contracts, rate structuring, act modifications, rebating, and surcharges.

First, service contracts must now be negotiated with the conference, not the individual lines, from what we understand. Also, not every association, shipper, or exporter has enough standing or stature to negotiate with the conference. This option must be available to the little guy that has "tensies" and twenties, not just those with hundreds and two hundreds [of containers]. Every little bit helps. The conferences are organized as a unit and given antitrust immunity. Occasionally they are patronizing to us but they are not responsive.

Second, we would like to see open conference meetings or, at the very least, a reason for denying requests other than the standard "the members regret" statement. You get an answer back from the conference, "the members regret that we deny your rate request." No reason. How can it be modified? How can we change it? How can we have a little leverage with it?

On the rebating issue, I don't believe that we have any shippers or exporters in our valley that are involved in rebating or even discussing rebating. All they want is a fair shake down there. I cannot comment on that from my perspective as an ocean freight forwarder. I cannot even discuss it. If anybody discusses it with me, I blow the whistle and point the finger, real quick.

Finally, the rate structure and surcharges should be looked at together. The rate structure is most confusing to the association exporter. Not because he is not smart enough or interested enough to determine what's going on, but rather because he's involved with concerns of freezes, hurricanes, soils, pesticides, carton labeling, the Food and Drug Administration, the U.S. Department of Agriculture, the California Department of Agriculture, the Texas Department of Agriculture, Mr. Hightower, the Florida Department of Agriculture, the franc, the mark, the gilder, the yen, the metric ton, the long ton, the short ton, the measurement ton, the cubic foot, the cubic meter, weight or measurement—whichever produces the highest revenue. Remember that we must be concerned about what is going on with the harmonized system of tariffs, a new Schedule B, and a mandatory export declaration using metric measures. Taking all of the foregoing into consideration, I wonder if it would be possible to structure our rates without mirrors and slight of hand.

Of major concern to us are the add-ons and extensions on the rate structure. They appear to be no more than an attempt to cloud the true cost of exporting and [of] keeping rates up without being up-front with them.

What is a container handling charge? What is a container service charge? Is that part of the liner service? What is a currency adjustment charge? What about container rental charges, port congestion surcharges, and on and on. Who determines these and why? How are they calculated, and are they applied fairly?

Summary

To summarize, the 1984 act was a good start. But we'd like to be more involved in the review and possible revision. The conference system does stabilize rates, it does hold them up, keeps them there, but we don't know really how substantiated they are. We'd like to look at their side, their view and have feedback from them. Our exporters would like to know how they can get involved to protect their own interests.

At my previous job, we had what was called the "half-a-loaf" award. It was a plaque, with a papier mache half loaf of bread. It was presented to the person who made the greatest compromise on policy, planning, and formulation because a half loaf was better than none.

We, the Association, are willing to work for our mutual good for both conferences and exporters. All we want is a little bit of respect. We do grow a great cabbage in the valley, but we don't want people to think we just fell off the cabbage truck.

Encouraging Competition in the Ocean Liner Industry

Pat Hanemann
Vice President
Sales and Marketing
Dole Citrus Co.
Houston Workshop,
Oct. 27, 1988

Our business is the packing and selling of fresh oranges, lemons, and grapefruit. Almost all of our fruit comes to us on consignment from private growers, we try to get the best return we can for their crops. Thirty percent of our total sales volume is derived from export. Together with our sister companies, we ship some 8,000 twenty-foot container equivalent units (TEU's) of agricultural products to Europe and Asia each year, and over 90 percent of this volume is shipped in refrigerated containers.

Since the Pacific Rim is our major market, I'm going to focus my remarks on the Transpacific Westbound Rate Agreement (TWRA). Before I go any further, let me say one thing. I'm going to bash the TWRA like everybody else, but in doing that, I'd like to welcome Mike Diaz from American President Lines (APL) and Ray Ebeling of Sea-Land. I admire their courage for walking into this lions' den. However, I do think it will benefit them to be exposed for 8 hours to the level of frustration, the level of anger, and the level of urgency that we all feel. Even if we are wrong, we're still their customers and they need to know what we're thinking.

Let me start with a little bit of history and I'd like to precede that with a little illustration: Little Johnnie got a hatchet for his birthday and was looking for something to use it on. He couldn't go after the barn because they needed it for the work. He couldn't go after the house because it was too important, and the trees were all too big. Then his eyes suddenly set on the outhouse. Chop. Chop. Chop. Down went the outhouse. Later, his dad walked up to him and said, "Little Johnnie, I've got a question for you, but before I ask, I want to tell you a little story about the father of our country, George Washington. When he was a little boy about your age, he had a hatchet like you have and he cut down a cherry tree in the back yard. And his dad came to him and said, 'Little George, did you chop down the cherry tree?' And little George said, 'Father, I cannot tell a lie. I did chop down that cherry tree with my little hatchet.' And the father said, 'Son, I applaud your honesty and I think you are going to go a long way.' And sure enough, he became the first president of our country and the founding father of our republic. Now, my question to you, little Johnnie, is did you chop down that outhouse?" Johnnie looked up and said "I cannot tell a lie, Father, I did chop down that outhouse." Well, his father picked him up by the scruff of his neck, dragged him behind the woodshed and licked the tar out of him. Little Johnnie stood behind the woodshed crying and said, "Daddy, here I thought I was going to be President of the United States and you just beat the tar out of me for telling you the truth. What happened?" And the father replied, "Little Johnnie, the big difference between that story and this one is that George Washington's daddy wasn't sitting in that cherry tree."

Well, in 1982, 1983, 1984, it was the ocean carriers who were in the outhouse. They had deployed too many ships and containers in the transpacific trade than were justified by the available cargo. This, in turn, led to a rate war, which drove rates down to an economically unsustainable level.

Contrary to the way the story is sometimes told, we agricultural shippers were not responsible. While we were not unprepared to accept the rate reductions, we didn't put a gun to the heads of the shipping executives and force them to oversupply the Pacific trade lanes with ships and containers. Those bad decisions

were theirs. Second, all of this took place within the context of a conference organization, which just goes to show you that even antitrust immunity won't always protect you from the adverse effects of bad business decisions.

The TWRA started out with 16 members. Since that time, three companies, roughly 20 percent, have abandoned the trade. Let's look at another measure of the stability provided by the conference system. By March 1987, freight rates for our oranges had increased to $4.34 a carton. That was a 70-percent increase from the same marketing season 24 months earlier. Today, that rate stands at $5.21 a carton. That's an increase of 105 percent over 1985 levels. Has this affected our business? You bet it has.

Since 1985, crop size and exchange rates consistently have worked in our favor both in Europe and in Asia. Despite these favorable conditions, however, our exports of California citrus, which are carried principally by conference carriers, have gone absolutely nowhere.

Many people would say that, if there's no increase in Dole's citrus business, that's because that Pat Hanemann is an idiot and he doesn't know how to sell citrus. (I'm not even going to argue that one because they may be right!) What I've done to neutralize that argument is to take industry figures; what we—as a California/Arizona industry—have exported over the past 4 years.

In 1985, total of naval exports from the state of California stood at 5.3 million cartons. In 1988, 4 years later, they had reached a level of 5.4 million cartons. That's an increase of 1 percent in 4 years. That's with an exchange rate that has gone from 260 yen to the dollar to 130 yen to the dollar with a lot of other things that generally have been beneficial to the trade in our particular commodity; we've gone up 1 percent. Now, that's the good news.

Lemon exports stood at 9 million cartons in 1985 and they have shrunk to 8.3 million cartons in 1988, a net decline of 8 percent. For Valencia oranges, figures stood at 12.4 million cartons in 1985, 11.1 million cartons in 1988—a decline of 11 percent. All of this means less returns to our growers, less contributions to my company, and less export earnings to the United States.

Now, if you quote these numbers to TWRA officials, chances are that they will tell you that this is not a transportation problem, rather this is a trade problem. That's their way of saying "Hey, its not our fault. It's your fault." Well, perhaps they're right, so we thought about that a little bit. We looked into this theory to see if maybe we weren't responsible for it.

But we have the advantage. We, as Dole Citrus, have the advantage of also being pretty active in the export of Florida grapefruit, and if you look at Florida grapefruit exports over the same period of time, this TWRA theory really doesn't seem to hold any water.

Seventy to eighty percent of Florida grapefruit exports to Japan travel on refrigerated (breakbulk) vessels at negotiated rates reflecting worldwide market conditions for that particular class of ships—while citrus exports out of California have, as I've just told you, stagnated or declined over the past 3 years. Florida grapefruit exports have grown from 6.2 million in 1986 to 8.9 million in 1987 to 11 million in 1988. If there is an overall trade problem, why has it only affected

California/Arizona citrus, while allowing Florida citrus exports to increase 77 percent in the past 3 years.

Meanwhile, the TWRA members have been doing extremely well, thank you very much.

During the first 6 months of 1988, Sea-Land earned $19 million in profits. That isn't as good as the $44 million they earned during the first half of last year due to expansion and acquisition programs. But most of us would say $19 million isn't bad. APL earned as much in the first quarter of 1988 as Sea-Land did in the first half, $21 million. Now, I was hoping that Mike [Diaz, APL] might be able to update us on how they did during the second quarter so we could have comparable figures for the first half all the way.

Again, we would be the first people to agree with them, that they took a severe beating in 1982, 1983, and 1984. However, my company changed ownership and all of us were involved in shakeouts in one form or another. But, that is history and now is now. Now our business is being undermined and we have to take the steps that the situation calls for.

Now, as shippers, we think that carrier profitability is just great. We need to be profitable to stay in business and we need carriers for our exports as badly as carriers need us to be their customers. But a lot of our shippers feel that the pendulum, which admittedly had swung in our favor in 1984, is now swinging two to four in the carriers' favor today.

Even more scary is the fact that carriers have shown no inclination—as Phil White's figures, I think, demonstrate far better than do mine—to slow down on rate increases which threaten us with further erosion in our export competitiveness. Furthermore, their protection against antitrust, which nobody else in this room benefits from, is one additional feature which disinclines them to be as sensitive toward rate pressures as we are.

So much for the problems. There are no definitive solutions. I'm hoping that you guys are going to come up with solutions for us, more than we're going to come up with solutions for you during the course of the day. That's why all of us generally have traveled a pretty good distance to be here. You have more answers on that score and have probably thought about it as much or more than we have.

But let me give you four ideas; these come not only out of the thoughts that we have as Dole Citrus, but also out of the fact that I'm chairman of something called the Ocean Transportation Task Force of the United Fresh Fruit and Vegetable Association, which is one of our two big fresh produce industry groups.

The first thing we can do is to make our voices heard on the review process of the Shipping Act. Use the USDA Office of Transportation, which has done a remarkable job of sensitizing all of us to the importance of the issues and the possibility of drawing some advantage of the review process in order to make sure that this playing field gets a little bit more level. Use your industry associations, use the FMC, which will all be represented this afternoon. The provisions in and/or interpretations of the 1984 Shipping Act on rate making, rate review, service contracts, and independent actions simply have given the conferences too much control over the destiny of exporters such as yourselves. If you don't get involved in the process, you will have no right to curse the outcome.

The second thing, keep your Senators and Congressmen aware of the issues involved. Bring their influence to bear in furthering your interests.

Third, think about working toward the formation of shippers associations. Now, we at Dole Citrus are as onerous and as competitive as any of you in this room. It is absolutely unnatural for us to lie down together with the Texas Fruit and Vegetable Association, or with Riverbend, or with Sunkist, or with Seald-Sweet, or with anybody else. We are much more comfortable bashing them in the marketplace. But the fact of the matter is, alone, we're just too small to fight this fight. And we have concluded that the only way that we have a fighting chance in this struggle is if we band together. We're working with the Western Growers Association; we're working with the United Fresh Fruit and Vegetable Association, Florida Citrus Mutual, the Florida Citrus Commission, and anyone else who is of like-minded interest. We would love to have the Texas Cotton Shippers Association or the Texas Fresh Fruit and Vegetable Association working together with us, because the conferences and the conference members have done an admirable job of dividing and conquering, and its our own fault. Until we redress the situation, we had better be prepared to live with the consequences.

And fourth, if the conferences decide to eliminate competition among their own members, which they apparently have done, then it becomes incumbent upon us to encourage other competitive options. That includes nonconference shippers. It includes breakbulk shipping services—it includes things that neither you nor I even have thought about so far, but which we have to think about; new options we have to generate.

If we're not to lose our position, and lose our grower support, and eventually lose our markets overseas, we must remember that the conferences do not care whether they ship oranges, or cotton, or beef, or any other commodity. They are in the business of making profits and filling their ships with the most profitable commodities they can. I can't blame them for that. We are no less venal, greedy, or avaricious in the way we pursue our business than they are in the way they pursue theirs.

We wish we had the same antitrust immunity they had. We could become a little more greedy and avaricious, or at least become more effective at being greedy and avaricious. But, we can't look to them for our resolution. They have set out on a policy which clearly states, implicitly, if not explicitly, that the only way they're going to get an extra dime is to take it out of our pocket; and if we allow that to happen, shame on us.

Ocean Shipping Regulation—Its Impact on U.S. Export Markets

Bill McCurdy
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E.I. Du Pont de Nemours & Co. Inc.
Fresno Workshop,
May 26, 1988

The decade of 1980's will be remembered in transportation circles as one of great change. The passage and implementation of the Stagger's Rail Act, the Motor Carrier Act of 1980, the Airline Deregulation Act of 1978, and the Shipping Act of 1984 have brought pervasive change to shippers and carriers alike. Competition, free markets, customer service, and contracts all took on new meaning and added significance in the eyes of the carriers and their customers. But change, for better or worse, has not been accepted with equanimity by all. Some carriers and some modes have adjusted better than others to the change. Some have viewed the new environment with distrust and have sought to turn back the hands of time—while others have embraced the changes as presenting new opportunities and have expanded their horizons to gain new business and greater profits.

The decade of the eighties will also be remembered as one in which the ocean liner industry struggled with continuing problems of worldwide overcapacity and challenges of rapidly escalating intermodal demand. Firms failed, prices eroded, and demands for new and expanded services reached higher and more comprehensive levels. In this environment, it is a real credit to those in the maritime industry who have responded to this challenge by adopting new methods for solving customer needs, while containing cost and remaining profitable. This process has not been without significant challenge, and those who have succeeded certainly deserve our respect and praise.

In 1989, the Federal Maritime Commission—also caught up in the cyclonic changes of the eighties—will report to the President, Congress, and others on the success or failure of the Shipping Act of 1984. The Commission will have to deal with divided opinions on many aspects of that legislation, including the significant issue of whether the Conference System, as currently configured in U.S. trade, should be preserved or dismantled. Many other issues, such as confidentiality of service contracts; characterization of loyalty contracts; independent action as it applies to tariff items; loyalty and service contracts; the inclusion of foreign freight in "global" service and loyalty contracts; and the extent to which the FMC should regulate essentially commercial relationships between carriers and their customers, will come under the close scrutiny of the FMC and Congress in the days and months to come.

One of the more discussed issues in marine transportation circles today involves the level of confidentiality that should be afforded marine service contracts. Du Pont's position on this issue is well known. The corporation feels that confidentiality should be extended to service contracts. Full and complete confidentiality currently is afforded to contracts in the domestic arenas involving rail and motor carriage transportation and in the international air transportation freight. These modes, like the marine community, initially opposed [the] movement of goods under confidential contract and sought to preserve the tariff systems that historically dominated their trades. Today, the opposite is true. Over 70 percent of Du Pont's rail traffic moves under confidential contract. In addition, virtually all of the company's air and motor carrier movements are encompassed under a series of confidential, volume-based contracts. These confidential [agreements] have permitted the company to enjoy considerable administrative savings without forcing its transportation partners to forgo reasonable profit.

Future trends in transportation lend even further support to extending the use of confidential transportation contracts in U.S. foreign and domestic trade. New transportation theories, alternatives entitled "supply chain" or "integrated logistics," will require even greater cooperation and coordination between manufacturers of goods and their logistics "partners." Exchange of proprietary and secret information through advanced communications networks between shipper and carrier will enable U.S. exporters to realize significant savings in reduced inventories, better planning, higher customer satisfaction, and reduced administration. Carriers will profit by lower administration and selling expense, more efficient use of equipment, better planning, and higher levels of customer satisfaction. All of these savings will permit higher profits to be realized by the efficient carrier who enters into long-term "partnerships" through confidential contracts with his manufacturer/customer.

Detractors of confidentiality for marine contracts often maintain that only the large shipper will be able to benefit from long-term, confidential service contracts and the small businessman will not be able to compete. Under close analysis this argument must fail. Small shippers can compete with large shippers by cumulating their volume, joining together and forming "shipping associations" authorized under the Shipping Act of 1984. Conferences are required by section 10(b)13 of the act to "negotiate with shippers associations." Further, "discrimination" between shippers is specifically authorized by section 10(b)6 of the act. Finally, differentiation between buyers of services or material based on volume or level of commerce is, and has long been, accepted under the antitrust laws of the United States. In short, confidential, long-term contracts between shippers and carriers hold the promise of reduced costs, greater profit, and improved ability of U.S. exports to compete in the global marketplace.

A second area that has attracted a great deal of attention within marine circles in recent times is the concept of "independent action." Section 5(b)8 of the Shipping Act of 1984 currently requires each conference agreement to "provide that any member of the conference may take independent action on any rate or service item required to be filed in a tariff under section 8(a) of this Act..." The act further provides that the right of independent action does not extend to service contracts, and in section 4(a)7, that conferences may "regulate or prohibit their use of service contracts." The "right of independent action," together with service contracts, "open" conferences, and the right of shippers to form shippers associations were inserted in the Shipping Act of 1984 by members of Congress to offset, in part, the "monopoly power" afforded members of the marine transportation community by virtue of their right to join together and form "transportation cartels."

DuPont strongly believes that no transportation cartel should be permitted to prevent its members from effectively dealing with their customers on a contractual basis. Effective management of the customer's "supply chain," including its raw materials, work in process, finished product inventory, and the location and efficient siting of its means of production, will, in the future, depend even more on customized and reliable logistics services.

Conference management should not be permitted to interfere with or prevent efficient management of its customers' "supply chain." Nor should conference members who are unable or unwilling to serve the legitimate needs of a customer be permitted to participate in or control negotiations between those customers and conference members who are willing and able to supply such services.

Conference management currently has the right, under the Shipping Act, to deny to its members the right of independent action on service contracts. Du Pont recognizes and supports the conference's legitimate desire, under the act, to control and coordinate its members' activities with regard to service contracts. Du Pont does not, however, believe that this desire justifies conference management's denial to its members and their customers of the right to negotiate and enter into customized service or loyalty contracts required to service the legitimate needs of the global marketplace. If conferences are to be permitted to exist in their current form, conference management should be required to permit independent action by its members with regard to service and loyalty contracts. In Du Pont's experience, some conference managements have not negotiated in good faith, and agreed to enter into conference service contracts that were designed to reflect and satisfy the legitimate market requirements of their customers.

Current FMC rules prevent the filing of a single "global service contract". The Commission has indicated that it does not have "jurisdiction" over foreign movement of freight and has, therefore, refused to accept service contracts that cover movements of freight which do not touch U.S. territories. This refusal by the FMC, while not preventing effective use of a "global service contract," does ignore the global nature of the markets served by U.S. international corporations and their carrier partners. In addition, it unnecessarily complicates the administration of the "similarly situated" matching provisions contained in the 1984 act and its implementing regulations.

Loyalty contracts are currently the subject of litigation in the U.S. Court of Appeals for the District of Columbia. This is most unfortunate and is but another manifestation of some conference management's lack of concern for the legitimate market needs of its customers. Loyalty contracts are extremely useful tools in the exporter's arsenal. They can be used to help develop an emerging and uncertain market or shore up the exporter's position in highly contested mature markets. Loyalty contracts, because of their "requirements provisions," permit exporters to enter or continue to serve a market and still assure the carrier of freight volumes that do develop. A true partnership, with shared risks and benefits, results from an appropriate use of the loyalty contracts.

Once again, however, some conference managements have failed to see the opportunities presented by loyalty contracts and have, instead, chosen to view these tools as threats. Du Pont is currently using loyalty contracts successfully and is in the process of completing additional arrangements with others who are sensitive to the company's needs and wish to profit from its success. Du Pont has challenged those who would deprive it of the use of the loyalty contract in marine transportation. The company will continue to oppose those who wish to limit and restrict its ability to compete in the global marketplace and to reward those who look ahead with innovation and customer focus.

Concepts of "partnering" and "focus on the customer" are increasingly the driving force behind shipper/carrier relationships in the United States. The ocean liner trades are no exceptions. The regulatory structure of the eighties has created many opportunities to implement new ideas. One of the great challenges ahead for those who would participate in the opportunity that exists in the global marketplace is the need to enhance the flexibility of manufacturing and distribution systems to respond to changes in that marketplace. Changes can come in the form of new and innovative communications systems, greater awareness of true customer requirements, shared concerns for challenges facing both partners, and adoption of a forward looking, "can do" attitude by all who serve in the ultimate customer's "supply chain."

Survival in the global marketplace of the future will depend very much on the strength and resilience of shipper/carrier partnerships. Safety, service, and competitive pricing will continue to be very much in demand; but a willingness to work together—to make necessary mutual investments of time and understanding—will become increasingly important. Finding the right "tools," and developing the attitudes necessary to reach beyond rules and common denominator performance to a "state-of-the-art approach" that encourages us to build on compatible strength and values, will certainly be the challenge of the nineties. It should be a decade, if anything, that is even more challenging than the one now drawing to a close.

(The following statement was prepared by Mr. McCurdy in response to a request for his opinion on these specific issues.)

Issue One: Should the ocean shipping conference system be eliminated?

DuPont is not an advocate for, nor an opponent of, the open conference system currently serving U.S. trade as sanctioned by the Shipping Act of 1984. The issue, we believe, is not the conference systems per se, but rather the impact of that system, as currently managed, on U.S. commerce and the domestic shipping community, including the agricultural interests present here today.

During the legislative debates that preceded the passage of the Shipping Act of 1984, advocates of the conference system maintained that the antitrust provisions of the act would encourage conference members to share technology, to rationalize available capacity, to retire outmoded and inefficient tonnage, and to be able to respond in a timely and efficient manner to the legitimate needs of the shipping community. These were attractive arguments and held great promise for shippers and for a troubled U.S. economy faced with evergrowing budget deficits and an adverse balance of trade.

The promise of the Shipping Act of 1984 and its antitrust provisions has not been completely fulfilled. Conference management, rather than encouraging inefficient members to modernize their fleets and rationalize their service, has sought, instead, to protect and preserve less efficient members by significantly raising rates. In addition, management in several conferences have opposed efforts by shippers to obtain the customized logistics services necessary to meet the needs of overseas customers. The recent attempts of the Transpacific Westbound Rate Agreement (TWRA) to ban the use of service contracts and limit the applicability of independent action to loyalty contracts demonstrate conference management's tunnel vision and unwillingness to adjust to a changing global market.

The open conference system can work if its management will focus attention on satisfying the legitimate needs of its customers through efficient and economic application of "freedom to act jointly," granted conference management by the antitrust provisions of the Shipping Act of 1984. Rationalization, modernization of conference fleets, and working with (and not against) its customers are the keys to the survival of the conference system.

Issue Two: Should ocean shipping conferences have the right to restrict or eliminate the use of service contracts or loyalty contracts by its member carriers?

Du Pont believes that a conference should not be permitted to prevent its members from effectively dealing with its customers on a contractual basis. Efficient management of the customer's supply chain, including its raw materials, work in process, finished product inventory, and the location and the efficient siting of its means of production, will, in the future, depend even more upon customized and reliable logistical services. Conference management should not be permitted to interfere with or prevent its members from entering into firm contractual arrangements with its customers. Nor should conference members, who are unable or unwilling to serve the legitimate needs of conference customers, be permitted to participate in or control negotiations between those members who are both willing and able to supply such services to their customers.

Currently, conference management has the right, under the Shipping Act of 1984, to deny its members the right of independent action on service contracts. Du Pont recognizes a conference's legitimate need, under the 1984 act, to control and coordinate its members' activities with regard to service contracts within the context of the open conference system. Du Pont does not, however, believe that this right should be interpreted to permit conference management to deny to its members and their customers the right to negotiate and enter into customized service or loyalty contracts necessary to serve the customer's legitimate market needs. Conference management should be required either: (1) to permit independent action by its members with regard to service and loyalty contracts (2) to negotiate and enter, in good faith, into conference service or loyalty contracts with conference customers that reflect and satisfy the legitimate market requirements of those customers and fall within the capability of at least one, but not necessarily all, conference member.

Du Pont recognizes and appreciates the desire and legitimate requirement of the efficient carrier to earn a fair return on its investment. This goal, we believe, can best be satisfied by permitting carriers, whether independent or members of conferences, to enter into partnerships with their customers to serve the legitimate needs of the marketplace. Loyalty and service contracts, fairly and properly negotiated to serve the interests of both the carrier and customer, are an essential element of the formula for successful competition in the global marketplace of the future. It is only through these partnerships that U.S. trade interests properly can be served under future logistics/supply chain concepts.

Issue Three: What has been the net impact of the Shipping Act of 1984 on rates and services available to shippers and/or on revenue to carriers? In light of your answer, what specific changes in the act or how it is regulated by the FMC would you recommend?

The act has greatly simplified the review process for conference agreements and service contracts by the FMC. In addition, the act permitted, and some carriers have realized, economic savings by entering into capacity rationalization programs with competitive carriers and conferences. Shippers have gained greater rate predictability and certainty through the effective use of service and loyalty contracts. The guarantee of open conferences and the right of independent action on tariff rates have, under the 1984 act, preserved many of the advantages of a free market pricing system for the shippers.

Conference management has, in a recently sponsored FMC symposium, attempted to attribute many of the current ills of the liner community to the passage of the Shipping Act of 1984. The major economic determinant underlying the malaise of the liner community, however, has not been the Shipping Act of 1984, but the significant overtonnage that exists in the liner trade market share [which has] prevented rates from rising to the level of equilibrium. Further, this difficulty seems, in some trades, to be easing as a result of increased commerce between the United States and its trading partners.

In addition to difficulties stemming from overtonnage, there also is some indication that carriers and shippers have abused the privileges and rights afforded them under the 1984 act. These abuses could be significantly reduced if certain changes were made to the 1984 act and its implementing regulations. Initially, Du Pont would urge that service contracts be made confidential and that the FMC

review be confined to a determination that the contract was legally enforceable—that is, that it possessed "mutuality" under common law and laws not violative of the Prohibited Acts section of the Shipping Act of 1984. Further, FMC service contract rules should be modified to permit the addition of new commodities, destination and origin points and ports, and their rates. This modification would permit the service contracts to have longer terms while retaining the flexibility needed to respond to changing customer markets. Finally, Du Pont would urge that the right of independent action for service contracts be extended to members of conferences that elected not to offer or negotiate in good faith for such service contracts on behalf of their membership. Du Pont believes that these changes to the Shipping Act of 1984 and its implementing regulations significantly would reduce the opportunity for abuse that currently exists while preserving the [Congressional] intent.

Moderation

Chuck Villard
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Fresno Workshop,
May 26, 1988

Bonner feels that the future for California agriculture and various steamship lines is very bright. We also feel that some difficult decisions need to be made in order to keep steamship lines solvent and to continue to keep California agricultural industries a viable supplier for western and Asian markets. Bonner believes it is not in the best interest of the steamship lines, shippers—and for that matter, the general public—to have such polarized views on what needs to be done to protect a threatened industry. Bonner believes moderation is the key ingredient in solving some rather complex issues.

There has been no question that containerized movement of cargo over the last few years has been operating with depressed rates. Just recently, we have lost U.S. Lines, a company that has been in operation since I was a little boy. Other steamship lines are getting dangerously close to meeting the same fate as [the bankrupt] U.S. Lines. The industry is in serious trouble.

What I think is most important to understand today is that the Shipping Act of 1984 didn't create these problems for the steamship lines. The environment was created first by foreign governments that were unwilling to stop ship building activities. This created a huge overcapacity around the world. In the political arena, it sometimes can be more difficult to lay off a large number of workers than to secure a better future for an old established industry. Furthermore, steamship lines lost a lot of potential revenue. They were forced to fill their holds with lower-valued (often agricultural) commodities, because higher-valued American products were, for several years, priced out of world markets.

The third problem that has faced the ocean liner industry is the irresponsibility of some of the lines themselves, which is reflected in their pricing structures. Some lines, in order to get any revenue, have lowered their prices to an irresponsible level, and have brought the entire industry down with them.

Further, I might further add that for every irresponsible container executive who has approved low prices, there has been a traffic manager who has been unwilling to participate, responsibly, in the arena. They seem to lose sight of long term goals for a short term "pat on the back" by the boss for cutting the rate ridiculously low.

As with the problems that face the steamship lines, solutions can be complex and difficult. I think one of the areas we need to review, first, is the enforcement power

of the FMC. I am convinced that to avoid overcapacity as it has existed, the Federal Maritime Commission must have the power to review ridiculously low rates and demand some kind of cost justification. I am not suggesting that every container needs to move at a profit, but at least some overhead [costs] need to be covered. In addition, the practice of putting ships into the marketplace temporarily and taking them out needs to be reviewed. Shipping lines must operate in trade routes with the intention that they are in for long haul. They should not ply routes temporarily.

It already has been said that, as shippers, we must deal with the conferences, or if I may be so bold, the cartels. We have said that conferences often operate more from arrogance than intelligence. They set the pricing under which all independent carriers umbrella themselves; and many times, they seem unwilling to listen to our commodity problems. My contention is that conferences are a necessary evil, filling the void left by our Government, which no longer exercizes enforcement power to restrict overcapacity and low, unproductive rates.

Now, I am not suggesting that the United States develop a huge bureaucracy to review and restrict the movement of cargo at competitive rates. What I am suggesting is that a $300 rate per container moving to Japan from Oakland is ridiculous. This kind of pricing structure, ultimately, destroys the industry. We, as shippers, must support price stability and not large swings in container rates. As I have tried to suggest, the Shipping Act of 1984 did not create the environment in which we find ourselves. There are some very positive components of this act that I think are essential for keeping all lines competitive, and, for that matter, keeping conferences honest.

The key ingredient of the 1984 act is the right of independent action. If I, as a shipper, have a business plan that seems reasonable to a carrier from its business environment, why shouldn't we get together and make each other happy? If a particular carrier of the conference is cost conscious, if it has monitored and watched overheads and has made sound investments, why should this company be told by a conference that it can't charge a lower price? Now, keep in mind, I'm not talking about prices that don't contribute to overhead. It appears to me that independent action is a sound mechanism for forcing lines to review cost control techniques prior to reviewing an increase in pricing.

It seems to me that independent action creates a balance between shippers and conference carriers. I don't think that a small raisin company like Bonner Packing, would be listened to by ruling elements of the Pacific Coast European conference (PCEC) or for that matter, the TWRA. Bonner, with its 200 to 300 containers per year, is just too small. Bonner itself could join a shipping association, but prefers its independence and likes to deal on a one-on-one basis with various carriers. Bonner, through the development of positive working relationships between various carriers, has been able to reduce container rates for raisins to Western Europe by as much as $300 per container. This reduction in freight rates generally is passed on to the customer, assisting in the creation of greater demand for California-grown products in Western Europe. It is Bonner's belief that freight rates do have a direct bearing on our product reaching consumers in other parts of the world. Believe it or not, in the raisin industry, business is gained or lost by as little as a penny per pound. With the development of better quality products in South Africa, Australia, and Turkey, California raisins can no longer compete on quality alone. Consumers are now seeing Turkish raisins in the same light and quality as [those from] California.

Although Bonner is a strong proponent of independent action and of the 1984 Act, there are some things it thinks needs to be reviewed.

(1) Bonner believes that a contract established by one company with another can only be duplicated if the third party can furnish a similar environment. Bonner questions the validity of the unrestricted use of the "me too" kind of clause. When Bonner is willing to commit 200 containers for contract, we have a problem with our competition getting the same basic rates structure as Bonner with [only] 20 or 30 containers. This creates a rate environment that we feel is unproductive to a steamship line.

(2) A second area of the 1984 act that we feel needs reevaluation is the necessity for conference carriers to agree within 10 days on a contract or face potential independent action by one of its members. It seems to us that with bureaucracy as it is, a 30-day time period would give more rational thought processes into a subsequent contract and eliminate much confusion and potential mistakes on the part of steamship lines. Bonner should know and understand its business enough so that 30 days of waiting doesn't represent a problem.

(3) Bonner also believes there should be a minimum number of containers to establish a service contract. We have heard rumors of contacts being signed for five containers over a 3-to-10 day period. This, we believe, is not responsible management by the shipper or, for that matter, the steamship line. We at Bonner Packing are a little old fashioned in that we understand it is our tax dollars that pay for the processing of these contracts through the FMC. It's our contention that a service contract should not be written for any amount less than 100 containers.

Bonner also believes the 1984 act would be strengthened if penalties were added for shippers who, for other than force majeure reasons, do not live up to their commitment to service contracts. I have heard all kinds of potential penalties from steamship lines, which are so restrictive no one in their right mind would take the risk and sign them. In turn, we at Bonner believe there need to be penalties, other than the loss of established discounts. It's Bonner's contention that an equitable penalty may be 5 percent over the tariff rate on the lowest priced container on the contract. This penalty would cover all containers shipped.

In addition, adequate penalties to guarantee space on a vessel are essential. We think it is equitable for a 5-percent discount on any container that misses its selected sailing.

There has been much discussion [as to] whether tariffs and/or service contracts should be made public knowledge. Our feeling at Bonner Packing is that in order to keep everyone honest, this is almost essential. Making everything public also allows the checking of potential discrimination.

Bonner, as a small packer, often has been concerned that we might be subsidizing the larger shippers. Steamship lines, desperate for revenue, will give in on pricing to a larger shipper. This desperation forces them to look to the smaller shippers to meet lost revenues.

Frequent discussions have taken place among carriers and shippers to eliminate the current system of value-based rate structure. The new concept is to eliminate the differentiation between commodities and to charge a flat rate for containers. It

is my belief [that] this idea could be damaging to California agriculture. It ignores competition abroad, in particular, competition from nations closer to the marketplace. Primarily it ignores that freight rates affect the ultimate consumer price in foreign markets. Bonner Packing, as with other raisin packers here today, must compete with Greece, Turkey, and South Africa. Our rates, with this kind of competition in close proximity, have to be adjusted. Remember, a penny a pound can make the difference between maintaining or losing a market.

Another area of concern to Bonner Packing is the currency adjustment factor. We understand the need for it, but would prefer the actual factor to be determined by an independent body. It's been our feeling that the currency adjustment factor is nothing but a hidden price increase by the carriers. To avoid this potential misperception, I think the FMC should establish this factor.

Last, but not least, the final area [with which] we are concerned with is just how big the conference should be allowed to be. We become concerned when conferences are major entities in ports throughout the United States. I don't believe a coast-to-coast conference should be immune from antitrust action.

In conclusion, the problems that face steamship lines today are not a result of a legislative decision made in 1984. There needs to be some moderate changes to the act to create what our legislature, ultimately, wanted—a healthy, competitive steamship industry that supports American exports.

Ocean Shipping and the Texas Cotton Industry

Bob Poteet
Executive Vice President
Texas Cotton Shippers Assn.
Houston Workshop
Oct. 27, 1988

I my capacity, I represent 40-plus shippers of Texas and southwestern cotton. I don't wish to bore you with numbers, but I believe it will be useful here to mention a few. Let's talk about the last 5 years—and, for simplicity's sake—averages.

Average total U.S. cotton production [during the past 5 years] was 11,735,000 bales. Average total Texas (southwestern) production was 3,428,000 bales, or roughly 30 percent of the total U.S. production. Of those 3,400,000 bales, approximately 56-60 percent was exported. The majority of these exports moved through the Pacific coast ports, with a significant minority through the traditional gulf ports. Particularly, we are concerned with exports.

The impact of rate volatility on exports of our commodity is profound. Cotton typically is sold 6 to 9 months in advance of actual shipment. When this is taken into consideration, together with the facts that: a) the price of cotton is quoted in mills (cents to four places) per pound and b) foreign shippers are entering into traditional American markets, the stability of rates has tremendous importance.

The cotton industry supports the Shipping Act of 1984. Service contracts and obligatory independent action have tended to keep the industry competitive. Typically, independent lines write service contracts or volume incentive contracts, and the conferences/rate agreements respond.

The mandatory independent action (IA) portion of the act is, in our view, a portion that must be retained. A large percentage of cotton grown in the interior of the United States must be exported. We all can recognize what this does for our balance of payments and other obvious benefits. Also, cotton grown in the interior has some special [transportation] problems in relation to cotton grown in coastal areas.

Several carriers have devised very creative solutions to some of these problems through their use of intermodalism (which the 1984 act addresses and, we believe, encourages). Our perception is that some carriers, for whatever reasons, actively sought to discourage some of these solutions. It is our perception that only the threat of IA on the part of these creative carriers has allowed continued implementation [of these provisions of the act].

In recent years, more and more extra charges have been added to freight rates. We now have currency adjustment factors, terminal handling charges, terminal service charges, and container handling charges. These charges add to the carriers' bottom lines, but frighten cotton shippers in that the actual freight rates begin to represent a smaller portion of the quotation.

It appears that conference carriers that cater to certain markets (which they think of as FOB markets) impose certain surcharges to make their rates more attractive to buyers. In some instances, the tariff requires that these charges be prepaid. This has obvious cash-flow benefits to the carriers, who, at the same time, may be making extensive credit terms available to the consignees of the cargo, thus penalizing the shipper. The costs must be passed on to the buyer and make us less competitive with our foreign competition.

It is perhaps interesting to note that, in our perspective, cotton rates quoted "all-in" have tended to be somewhat more stable than rates quoted with "surcharges." Some conferences still quote bunker surcharges. Freight rates change, surcharges never seem to go away. These charges also tend to distort other parts of the intermodal equation. The cotton industry feels that carriers should be able to price their product (and they do) in a simple, one figure freight rate. It is our position that mandatory IA offers some hope of ultimately addressing this problem.

Since its inception, the Shipping Act of 1984 has resulted in significant economies for carriers through a wide range of agreements and rationalizations that were not allowed or were not encouraged previously. The shipper, in turn, has benefited from more services, more sailings, more competitive choices between different gateways and faster transit times. These benefits have helped the cotton shipper a great deal. It is recognized that one of the main selling points of U.S. cotton is our dependability: Dependability of supply, quality, and delivery. The act has helped us all.

The Shipping Act of 1984 is not "broken"—let's not "fix it"!

Supply, Demand, and Free Markets Are the Answer

J. Richard Graves
President
Graves Brothers Co.
Lakeland Workshop,
Feb. 9, 1989

It is a pleasure for me to be here today to discuss and learn about the Shipping Act of 1984. I must admit from the start not to possess a deep and thorough knowledge of the act. Certainly, many of you in the audience are more qualified to speak on the subject than I. However, hopefully, I can spark a few questions that can be discussed later in the panel discussion period and those questions can be answered by the experts here today.

As most of you know, I am in the fresh grapefruit growing, packing, and shipping business in the Indian River area on the east coast [of Florida]. I have consistently exported my product to both the Pacific Rim and Europe for about 20 years. For

all practical purposes we, like many other fruit and vegetable exporters in the United States, sell FOB and have only minimal involvement with ocean transportation, hence my ignorance of the subject. Our export business is no small part of our overall business. This year, exports will probably exceed 60 percent of my volume.

Not only is my knowledge of the 1984 act limited, but my knowledge of the conditions existing before 1984 under the Shipping Act of 1916 is equally limited. A large part of discussing and analyzing the 1984 act obviously must be done with regard to what the Congress and the industry intend to correct. Much can be learned by reading Section 2, "Declaration of Policy." There, the purposes of the 1984 act are set out as (1) to establish a nondiscriminatory regulatory process for the common carriage of goods by water in the foreign commerce for the United States with a minimum of government intervention and regulatory costs; (2) to provide an efficient and economical transportation system in the ocean commerce of the United States, insofar as possible, in harmony with and responsive to, international shipping practices; and (3) to encourage the development of an economically B sound and efficient U.S. flag liner fleet capable of meeting national security needs. Obviously, the real question is "have we accomplished these purposes and, if so or if not, what can be done to improve the act?"

At this point, I must come clean with everyone here. I do not believe that monopolies, cartels, or any other legal or illegal system that limits competition in an otherwise free market system is a better way. Therefore, I am categorically opposed to the Shipping Act of 1984 and any other such legislation. I have neither the time nor is this the place for me to give a full explanation of why I feel this way. I can only say that history has shown that every time government disturbs the workings of the free market, inefficiency and ineffectiveness has been the result rather than the well-intentioned result. The Shipping Act of 1984 is just another attempt by the Government to limit competition, create a monopoly, and try to shield an industry from meeting world competition. Historically, laws that limit competition for common carriers have served only to protect carrier profits and labor's wages. The results are inflated rates for both transportation and wages. When the challenges of competition are removed or neutralized, the justification of costs and the protection of profit margins become the controlling considerations of management at the expense of efficiency and competitiveness.

The fresh fruit and vegetable industry in the United States thrives on the free market. It is the most successful part of the American agriculture industry, largely because it is relatively free from government control and interference. An examination of this act by a free market thinker is shocking.

I would like to direct your attention to section 4 of the act entitled "Agreements within the Scope of the act." When I read items (a) and (b) I see the words like "...fix rates," "...pool revenue," "...allot port space," "...limit volume," "...engage in exclusive working arrangements," "...prevent competition," "...prohibit use of service contracts." I can't see anything listed that serves to attain the purposes for which this act was created. I recommend that each of you read section 4 and see if you think that the provisions included therein are in any way in your best interest.

About the only thing that this act assures a shipper like myself is that the rate I pay will not be lower than the most inefficient carrier's rates, and that innovation

and change must be presented to a governmental agency and a commission that is generally composed of carrier representatives before it can see the light of day. Obviously, it doesn't take a Rhodes Scholar to realize that the motivation to change and become competitive is less than zero. In the late seventies and early eighties the railroads, airlines, and interstate trucks basically were deregulated. By listening to the outcry that came from these industries, one would have thought that in a short time all three industries would have been destroyed. Contrary to the forecast of gloom, today we see all three industries are stronger, more efficient, and more innovative. Service and costs are much better and more in line than 10 years ago.

At the beginning of my talk I said that most of my product is sold FOB U.S. port. A large portion of the product is shipped on chartered vessels, none of which are U.S. flag vessels. The remainder of my product goes by container, that is common carrier. My information is second hand regarding rates, but that information indicates that the container rates are very volatile and equipment availability is problematic. I can remember a period about 3 years ago when we were faced with the loss of the fumigant EDB and break-bulk shipments became impossible. As my memory serves me, the container rates soared. I have some other recollections of the actions and situations such as this, but I think the point is that we now have the worst of all worlds.

Hopefully, in the panel discussion, the matters of "independent action," "service contracts," and "loyalty contracts" will be thoroughly discussed. When you understand how the act and the Commission treat these actions by innovative carriers, you will get a full impact of what a cartel can do for you.

We are told, and I believe, that the age of the American exporter has arrived. The future of business in the United States is the world economy. We must become world marketers. This means that we must go into the world and develop business—not wait for a foreign buyer to come over here and buy FOB. For U.S. business to be successful, we must have available an efficient and effective transportation system that is competitively priced. We must have the ability to deliver cheaper and more efficiently than our competitors. Transportation, generally, is the greater part of the "CIF."
The type of transportation system we need will never be developed so long as we artificially shield our U.S. flag carriers from the real world of competition. Supply, demand, and free market operations are the answer.

We are a nation of small businesses, both agricultural and nonagricultural. If we are to become a part of worldwide commerce, much thought by government and business must be given to how to form a partnership between supplier/producer, port operator and ocean carrier, that will deliver more for less. This act, even if amended, will only exacerbate the problem, not solve it.

Conference Power

Paul Crouch
Vice President
CALCOT, Ltd.
Fresno Workshop,
May 26, 1988

Sometimes, before you can shed light on the present or the future, you have to turn back the clock to somewhere in history. We at CALCOT [California Cotton, Ltd.] have found that our relationship with conferences in the past has always limited our flexibility in marketing our cotton, due to the exorbitant pricing structures assessed by conference carriers and their failure to allow shippers any flexibility from a dual rate agreement. CALCOT has been a Pacific westbound

shipper for over 25 years. During that time, we have been provided with reasonably good service. However, whenever space became tight due to currency fluctuations or an abundance of military cargo (like during the Vietnam War), our cotton would get bumped from one sailing to the next in favor of reefers and military cargo. The same has always happened to scrap and wastepaper over the years. I have seen times when we, literally, had to pay a refrigerated container price to obtain space for our cotton. This is when we had a dual rate agreement, and were promised stability in price and service.

Conferences have kept our hands tied in dealing realistically with our customers. In the past, if a buyer wanted to purchase FOB and requested routing to a nonconference vessel, we had to prove without a doubt that the particular arrangement was not our choice. If we had a chance to sell a large shipload of cotton to a conference destination (such as Japan), we were told that we had to time charter for at least 6 months in order to qualify. The only other alternative we were given was to break up the shipment and spread it among conference lines, which, of course, was much more costly than a charter arrangement. It was of no concern to the conference that by doing this we could lose the sale entirely because conference rates made us uncompetitive.

Now let's look at the Transpacific Westbound Rate Agreement (TWRA). In the beginning we were told they were not going to be a conference, but strictly a rate-making association that would request input from all shippers in helping them establish fair and reasonable rates in exchange for stability of service. This just has not been the case. On behalf of CALCOT, Ltd., I personally tried to convey my thoughts to the TWRA chairman regarding pricing. I did this through both telephone and Telex communications. All I wanted to do was establish a good line of communication between CALCOT and the TWRA. However, I was told on more than one occasion that the TWRA chairman did not meet with individual shippers. Through conversations with TWRA carriers I explained our position in regard to pricing structures for cotton. I asked several carriers to convey my thoughts to the TWRA chairman whom I was unable to reach. Again, we were ignored and did not even receive any communication, such as a letter or explanation [as to] why we would not be granted an audience.

It soon became apparent to us at CALCOT that we would have to look after ourselves. We began negotiating with nonconference steamship companies for both service and loyalty contracts. We felt this was the only way we could get the TWRA to react to the shippers' needs. When the TWRA discovered there were other reliable nonconference carriers that could provide equally good service at lower price levels, they brought their rates back to realistic levels in line with competition.

In my estimation, this is simply a cartel arrangement where freight rates are artificially escalated to permit large profit sharing among steamship carriers at the shipper's and buyer's expense. On November 29, 1977, we were quoted, by the now extinct Pacific Westbound Conference, a rate to Japan amounting to $105 per metric ton. This rate was increased every year after that date. In 1979, when the PWC finally stated they needed to get the rates up to $120 per metric ton in order to obtain a fair profit, we finally had had enough. We knew we would lose a good portion of the Far East market at that rate level, so we had no choice but to terminate our contract with the PWC and look for alternatives that would again make us competitive in the market. Today, we are paying a much lower base rate

per metric ton to Japan and the steamship companies say they are still making a profit even at this level. Does this tell you something about how inflated the rates must have been back in 1977? Supply and demand establishes the market price for a cotton shipper. We do not join forces with other cotton shippers and establish OPEC-like cartels to artificially escalate cotton prices. In return, we do not want the ocean freight carriers to do this to us. If it had not been for our breakaway from the PWC in 1979, by now we would probably be paying at least $160 per metric ton to Japan.

In my estimation, this is the only language the TWRA, or any other conference, understands. It is the only leverage any shipper has against artificially escalated rates. Now the TWRA is trying to eliminate both loyalty and service contract agreements. Apparently, they feel the contracts are a detriment to conference survival and are keeping freight rates depressed.

The pricing of ocean freight transportation should be established by supply and demand, not by independent cartels. Other carriers (such as truckers, railroads, freight forwarders, and other vendors) have to be competitive in the marketplace or they do not obtain our business. The TWRA would like nothing better than to have every westbound carrier as a TWRA member. This would make every shipper a captive to any rate the conference would like to assess. I feel if this were to happen, many shippers would not only lose their current markets, but would also lose many potential new markets.

If the shippers or shipper associations could deal with the TWRA or any other conference line through a nondisclosure contract process, I feel this would eliminate sharp declines in ocean freight rates. By making the rates public, it makes both the carrier and the shipper who entered into the contract very vulnerable. Other ocean freight carriers will either try to match or lower their rates below the contract level. If other carriers lower their rates, then the shipper is locked into a contract, whereby his competition can offer ocean freight at lower levels. The shipper also is responsible for dead freight if they do not deliver against their original contract. This means the original contract carrier may also consider lowering their rate to maintain good will with the shippers. This creates a continuous downward pressure on ocean freight rates.

If the steamship industry had nondisclosure contracts, information might be revealed to some degree, but overall, this kind of system has worked well with the railroad and trucking industries. Competitors could make guesses at what others' freight rates might be, but they would really never know all the details of the contract. If you sanctify your contracts with every carrier, I firmly believe this would help decrease the downward pressure on ocean freight rates.

It is beyond our comprehension why anyone would even consider the elimination of loyalty or service contracts. Such action would just make the conferences even stronger and the shippers would become captive to cartel pricing. We, as a large west coast shipper, feel such action would be detrimental to our entire international network and firmly believe the request to eliminate loyalty contracts should be denied.

Chapter 3 - Carriers' Perspectives

Representatives of ocean carrier companies were invited to make presentations at the workshops, as agricultural cargoes account for a significant amount of their business. This section includes the prepared remarks of two carrier representatives and the managing director of one of the largest liner conferences. The comments in this section are, generally, responses to the following questions:

(1) Should ocean shipping conferences be eliminated?

(2) Should ocean shipping conferences have the right to restrict or eliminate the use of service contracts or loyalty contracts by their member carriers?

(3) Do you feel the specifics of service contracts should be kept confidential, or not?

(4) What has been the net impact of the Shipping Act of 1984 on rates and services available to shippers and/or on revenue to carriers? In light of your answer, what specific changes in the act, or how it is regulated by the FMC, would you recommend?

Effects of the Shipping Act of 1984

Raymond P. Ebeling
Vice President
Pricing
Sea-Land
Services, Inc.
Houston Workshop,
Oct. 27, 1988

(1) Should Ocean Shipping Conferences be Eliminated? I'd like to take a few minutes to lay out the general reasons why I think shippers and carriers both should want to see the conference system continued. Criticism of conferences usually begins with the assertion that they are anticompetitive associations of carriers formed to keep rates higher than they otherwise would be. I don't think that is true. In fact, I believe the present conference system actually fosters rate competition. The existence of conferences ensures that there will be more than a few carriers to serve a particular trade.

If conferences ceased to exist tomorrow, shippers—whether of agricultural products, auto parts, or apparel—might well benefit from lower ocean rates when the predictable rate war followed. But lower rates would not last long. Rate wars would inevitably flare up in conference-free trades, killing off weaker carriers and leaving the field, or the ocean, to a few survivors.

Competition from outsiders and independents is fierce in all major trade lanes precisely because they often choose to price their services at a percentage reduction off the conference tariff and thus find enough customers to survive.

Just as important, intense competition can be found within the conferences themselves. This internal competition plays out most obviously through independent actions, but it is more pervasive in the day-to-day negotiation agreements on service contracts and common rates.

There are two other factors that prevent unfairness from creeping into the conference system:

- The first is openness. Conference membership is not restricted in any way, an important difference when compared with non-U.S. trade.
- The second is regulatory supervision. The FMC reviews all conference agreements when they are filed, receives minutes of all meetings and regulates tariff filing and enforcement, all with an eye to protecting shippers' interests.

Now, let's turn briefly to the Shipping Act of 1984. It has been said in criticism that the act expanded carriers' immunity to antitrust actions. In fact, that expanded immunity did nothing but clear the way for conferences to provide intermodal services in addition to ocean transportation. The subsequent explosion in intermodal services, led by Sea-Land and APL, has been [of] enormous benefit to shippers.

In today's transportation marketplace, conferences must be responsive to shippers. Strong nonconference competition, independent actions by conference members, and the proliferation of service contracts all guarantee that conferences will be alert to changing shipper needs.

If anything, conferences will become even more responsive to shippers as they adapt to life under the Shipping Act. In short, no, the ocean shipping conference system should not be eliminated.

(2) Should ocean shipping conferences have the right to restrict or eliminate the use of service contracts or loyalty contracts by its member carriers?

Let me get a minor usage point out of the way before we get into this question. I include loyalty contracts under term service contracts because they are essentially the same thing. There is no difference between the two beyond the measurement of commitment - [such commitment is] measured in percentage terms under a loyalty contract and in numerical terms under a service contract.

With the passage of the Shipping Act of 1984, conferences have the right to restrict or prohibit the use of service contracts, and that is as it should be. Most of you remember that service contracts were not permitted in any form prior to the 1984 act because they were viewed as being inherently discriminatory. Liner operators changed that by permitting service contracts only on condition that the essential terms be made available to shippers in similar circumstances.

The act's intent was to make the service contract a closely tailored alternative to tariff ratemaking and to make it consistent with the common carriers' obligation not to discriminate. The writers of the Shipping Act recognized the role of conferences in fostering stable trades and enhanced service. They also knew that a conference, denied the power to control service contracts, would be too weak to do the job it was created for.

That's why the act explicitly states that conferences can regulate or prohibit their members' use of service contracts.

Again, we think that is as it should be.

[No response to question 3 was given].

(4) What has been the net impact of the Shipping Act of 1984 on rates and services available to shippers and/or on revenue to carriers? Would you recommend any specific changes in the Act, or how it is regulated by the FMC?

High volumes of cargo moving in a vigorous international trade, combined with a high level of competition among carriers, usually result in lower rates. We've had both these things since 1984 and rates have steadily, and in some cases dramatically, declined. At the same time, the level of investment by some carriers in new ships and improved services has remained constant or increased. Sea-Land, for example, bought 24 new ships and improved land operations. And Mike Diaz [of APL] can tell you about his company's investment in new tonnage and improved services.

The Shipping Act of 1984 contributed several new ingredients—notably independent action and service contracts—to an already rich competitive mix.

In my view, independent action and service contracts should not be viewed as the prime cause of rate erosion. They were merely two new approaches that helped to speed up a process of rate decline that probably was inevitable and certainly well under way.

The purpose of a conference is to permit carriers to act collectively to overcome market instability. Independent action conflicts with this purpose almost by definition. Conferences that do not exercise internal discipline, whose members resort to independent action too easily and often, will create an effect opposite to the one intended by the conference system. In the weak markets prevailing since the 1984 act took effect, independent action has weakened the ability of a committed conference to control rate erosion and instability.

Despite this unfortunate effect, I want to stress that Sea-Land does not advocate repeal of the independent action and service contract provisions of the Shipping Act. We believe the emphasis should be on modification. It may be, for example, that the unhealthy effects of independent action could be moderated by extending the timeframe, or by allowing conference consideration. And, if service contracts were more tightly written to incorporate genuinely binding mutual commitments, perhaps they would allow for more accurate planning around predictable volumes and revenues. Those are just two possible changes.

There may be other revisions and modifications that would help to make the transportation environment better for carrier and shipper alike. As we gain more experience, I'm sure we'll be able to identify and carry out better ways to do our job: serving our customers.

Remarks on the Shipping Act of 1984

Michael Diaz
Senior Vice President
Marketing/Logistics
APL Intermodal, Inc.
Lakeland Workshop,
Feb. 9, 1989

I would like to thank USDA for the chance to address our customers here today. We would rarely miss the chance to communicate. This, as some of you may know, is my second invitation to participate in the USDA program as I had the opportunity to play a role at the Houston get together. That experience was informational and we have taken action based on the voices that were heard.

TWRA will be making changes on how it approaches policy issues, and the TWRA will be making changes in its service contract posture. At the Hong Kong Owners Meeting a committee was established to be manned by two U.S. carriers—myself and John Clancey for Sea-Land—and NYK Lines represented by Harry Takahashi. We will be responsible for developing the TWRA public policy.

Additionally, at Hong Kong the members voted to begin development of service contract guidelines to be reported to the full membership in Korea in March. We eliminated the prohibition and are looking for ways to meet all of our customers' needs. This task is not an easy one because we not only have difficulty in meeting the needs, but also have difficulty identifying them.

The liner ocean carriers are represented by a relatively small number of companies, but the issues we face in the Shipping Act are balanced by our customers who are represented by thousands of exporting and thousands of importing companies. These thousands of points of light should serve to educate and inform us, but, unfortunately, we have a tendency to be blinded by the input. Without forums to develop some formal intercourse, that blindness would be as far as we would get.

[A response to question 1 was not included].

(2) Should ocean shipping conferences have the right to restrict or eliminate the use of service contracts or loyalty contracts by their member carriers?

Absolutely, yes!

First, carriers, inside or outside an agreement, should have the same rights, that is to negotiate and sign service contracts—contracts to provide services to our customers. I see no difference between service contracts and loyalty contracts except that the volume is counted as a percentage of a customer's business instead of a number of units, revenue tons, 40-foot boxes, etcetera. Any agreement's regulation of contracts is known before any carrier joins an agreement, therefore, we are exercising our choice to have our agreement regulate this portion of our business. Conferences' and agreements' ability to regulate contracts helps to maintain stability between the carrier tariffs and the contract pricing.

It, therefore, also helps to maintain stability in the overall pricing structure in the trade.

You are probably thinking, "how does that help me?" It does, and here is why. A real life example: value-added reefer service. In March 1985, the largest citrus exporter in the Pacific from the Pacific coast was offered and signed a contract. The contract committed the customer to guarantee to tender 650 40-foot trailers to the carriers. In exchange the customer was committed to a 15-percent discount (a fixed freight) by the carriers. This contract set off a chain of events, almost entirely negative for all the participants in the trade, shippers and carriers.

It soon became clear that an innocent, and obviously proper, use of the contracting system had disadvantaged all of this shipper's competitors overseas. Differentiation for oranges in Hong Kong, obviously, has a strong price bias. Within weeks, carriers inside and out of the agreement were offering the same

discounted rate for one 40-foot box shipped. This rate first appeared in contractual form and later became the tariff rate through various vehicles.

Everyone lost in the deal:

- The original customer lost, stuck with a 650-FEU commitment and a fixed rate that was now undercut with no volume commitment.
- The broad spectrum of customers lost. Everyone was treated differently based on the pricing mechanism that was used. Some customers had contracts, some had no access to the rate, and some later had tariff rates below the contracted level. Competitiveness overseas also was affected by differentials in ocean freight rates.
- The carriers lost. Rates tumbled, and the same amount of cargo was shipped as would have been shipped if there had been no reduction in the rates.

Unfortunately, this scenario was not limited to citrus, but we, played it out again with mixed chilled beef, poultry, lumber, and wastepaper. Wild gyrations in rates, whether triggered by service contracts or by tariff actions, do no one any good.

(3) Do you feel specifics of service contracts should be kept confidential or not?

This question has a significant legal background and impact on the way we do business; therefore, it is difficult to be definitive from a commercial viewpoint. It may be too early to form a position on confidentiality but if I have to answer now, my answer would be to continue publishing [the contracts].

It sounds innocuous to allow elements of the service contract mechanism to be held confidential. Obviously, based on the FMC's most recent survey, this notion has gained popularity with some of the shippers. The effects of this change, however, are far-reaching and can undercut the overlay of our Government's regulation of international shipping in the U.S. trades.

To support the notion of fairness to all shippers and to allow for regulation of malpractices in international trade, the principles of tariff filing and enforcement were promulgated in U.S. law and reinforced by the 1984 act.

Confidential contracts—in other words elimination of filing—would cut to the heart of this idea of common carriage and fairness under the act. Without the tariff there would be no base line, so no equal access and no enforcement would be possible, or necessary.

The question becomes even more difficult to handle when one hypothesizes the fairness/common carriage issue. Assuming the common carriage doctrine could be kept intact even though contracts were kept confidential, would our position change? Our feeling here is probably not, because we would lose our ability to maintain equilibrium and stability. With confidentiality we would find ourselves being whipsawed from customer to customer, trying to respond to rate needs that may or may not exist. In 1985 we were unable to maintain any equilibrium when we knew what the contract rates were; I don't know how we would do it without that knowledge.

(4) What has been the net impact of the Shipping Act of 1984 on rates and services available to shippers and/or on revenue to carriers? In light of your answer, would you recommend any specific changes in the act or how it is regulated by the FMC.

Since 1984, APL has invested significantly to improve our services and capabilities. We have managed an unprecedented expansion of our fleet with the addition of L-9 vessels, and last year the introduction of C-10 vessels. Coupled with the addition of the vessels, we have engineered a diversification and expansion in the intermodal stack train business. From our perspective, APL's service and capability to the customers has done nothing but improve.

What did the 1984 act really change?

- Intermodal Services. Result—More cost-effective transportation.
- Conference approval process, reaffirmation of antitrust immunity. Result—mega rate agreements [like] TWRA, ANERA.
- Mandatory independent action. Result—increased rate pressure.
- Service Contracts. Result—mixed. A new tool that needs refinement and closer understanding between the users, carriers, and customers.

It, obviously, was difficult for legislators, carriers, shippers, and Government agencies to cure the ills of the world of international shipping with one act. Our view is mixed on the successes of the act, but we are not prepared, or able, to tie the act directly to the results we have seen since 1984. Certainly, we can tie the use of some of the new tools the 1984 act gave us to the problem we have faced over the last 4 years. Based on that experience we support fine-tuning of the act, [to include]:

(1) Fine-tuning of the service contracting regulation to allow for more conventional business practices, for example, routine amendments, elimination of destabilizing bonafide offer clauses, definition of a shipper and similarly situated shippers, expanded source areas after signature, etcetera.

(2) Further clarification of shipper association and their role.

(3) Retaining of independent action.

In conclusion, I would like to reaffirm APL's belief that the Shipping Act of 1984 represents a balance of shipper and carrier interests. It is the product of extensive debate and compromises. In order to improve on what we have today, the focus of the principles should reflect the experience of all parties since the act became effective in 1984.
Let's communicate.

The Current Status of Ocean Liner Shipping

Ronald B. Gottshall
Managing Director
Transpacific
Westbound Rate
Agreement

Freight conferences have existed for well over 100 years. On several occasions, notably in 1916, 1961 and 1984, Congress has examined their need and in each case continued to allow conferences to exist. Part of this was in response to international custom, in which freight conferences are an accepted part of the economic fabric. Congress also, apparently, recognized a need in international commerce to ensure adequacy of transportation to protect the imports and exports of the United States. Interestingly enough, the Canadian Government reached virtually the same conclusions in its enactment last year of a new "Shipping Conferences Exemption Act."

Ocean transportation is a highly capital-intensive industry, which requires substantial investment to provide the facilities, vessels, equipment, and

infrastructure necessary to provide services to achieve some modicum of stability in rates to permit an adequate return on investment, thus carriers have banded together to form rate agreements or conferences. Unlike conferences of the past, those in use today in the United States and Canada must provide the right of independent action to members who disagree with conference decisions, or who have other operational reasons for deviating from the conference rate structure. While this injects some uncertainty into the search for stability, nevertheless it does not fatally detract from the conference structure where agreement on rates, terms, and conditions on many commodities may still be reached and observed by the group as a whole.

Despite the ability to jointly fix rates, conferences have substantial competitive factors which influence rate making. These include, but are not limited to independent carriers in the trade (both liner and nonliner); competition between member lines; the total price at which a commodity can be sold in a foreign market; and sourcing from areas or countries outside the scope of the conference.

Conferences and rate agreements perform a very valuable function in providing a wide range of transportation choices to the shipping public. Absent a conference structure, the most likely scenario is oligopoly, which may limit substantially the choices of the shipping public to a few carriers or group of carriers without any assurance that the specialized equipment necessary to handle transportation of agricultural products would be available in the marketplace.

Antitrust Immunity: The Shipping Act of 1984 did not give antitrust immunity to the carriers; it only continued authority that already existed. If the act had not been passed, carriers still would have had the privilege of fixing rates jointly, although independent action would not have been mandatory. Moreover, service contracts probably would not have been allowed.

Capital Cost of the Shipping Business: The shipping business is a capital-intensive business with 75 percent to 90 percent of all costs being fixed. Most carriers consider 85 percent to 90 percent of cost as fixed. The cost of getting into the business is extremely high, in that to run a simple transpacific service between Asia and two west coast ports requires a minimum of five ships at $60 to $70 million each, plus containers to fill each slot and enough to provide for loading and unloading at origin and destination. In addition to these costs, there are terminal costs, inland costs, marketing, etcetera. To get into the business on a competitive weekly basis requires about a $600 to $700 million capital investment, plus operating funds.

Reefers [refrigerated containers] are a discretionary market: Reefers are built exclusively for the U.S. export trade. The capital cost of a reefer is 5 to 6 times that of a dry box [container]; it has a shorter lifespan; and maintenance [costs] over the life of the container are equal to the capital cost. Reefers make only about six round trips annually compared to 12 to 14 round trips for a domestic reefer. Reefers are of little value in the import trade because the interior of the average reefer is only about 80 percent of the comparably sized dry box. If carriers can't make money on reefers, they simply won't buy them.

Chapter 4 - A Debate of the Issues

Debates were held at the workshops to present the range of opinions held on the major issues. Both shipper and carrier interests were represented on the debate panels. The following is an edited transcript of a debate conducted at the Houston workshop, October 27, 1988. Some of the remarks are responses to comments made by agricultural shippers earlier in the Houston program.

Debate Participants:
Perry Walker, Riverbend
Ray Ebeling, Sea-Land Services, Inc.
Mike Diaz, APL Intermodal, Inc.
Bill McCurdy, E. I. Du Pont de Nemours, & Co. Inc.
Moderator: Peter Friedmann, Agriculture Ocean Transportation Coalition

Mr. Friedmann: Our panel is going to debate three major issues, and answer a few questions from the audience. I'm looking forward to an informative discussion. Our three topics of debate are:

(1) Should the ocean shipping conference system be eliminated?

(2) Should ocean shipping conferences have the right to restrict or eliminate the use of service or loyalty contracts by its member carriers?

(3) What has been the net impact of the Shipping Act of 1984 on shippers and carriers?

We will start off from the carrier point of view. Ray Ebeling and Mike Diaz would like to make a few opening remarks in response to the comments made in some of the earlier speeches by agricultural shippers. We will begin with Mr. Ebeling of Sea-Land.

Mr. Ebeling: Thank you. I am delighted to be here, and particularly delighted to have a few minutes at the outset to comment on some of the things that were said this morning.

Winston Churchill once said that the English and American peoples are two peoples divided by a common language. This, apparently, is also true of shippers and carriers. But if that's the bad news, the good news is that we can fix that. I think that's what we'd like to focus on in the future, and I think it starts at meetings like today's.

I'd like to make a few comments. I thought all the presentations this morning were really excellent. I think, as exporters of agricultural products, most of you know that the price of moving containerized cargo has declined quite a bit since 1984. Exporters of peanuts from the east coast now pay only one-third of what they paid in 1984 to ship with conference carriers—literally, a reduction from $2,250 to $850 to move a 40-foot container across the Atlantic.

While only a few commodities have dropped that drastically, the downward trend has run, virtually, across the board. For example, tobacco exporters are paying an average of 15 percent less in 1988 than in 1984 to ship from the United States to Europe. Shipping a container of cotton now costs $200 to $400 per box less than in 1984. Cotton linter shipping costs are down closer to $700 per box, so I'm somewhat tempted to paraphrase Ronald Reagan's famous line from 1980, when he asked the American people if they were not better off than they were 4 years ago. Are you all not better off, in terms of rate levels where they are today than you were in 1984?

To Pat Hanemann [Dole Citrus Co.], I would like to just make a comment. It is true that every dollar we make is a dollar you spend. A dollar of profit for us is a dollar of cost for you, and that's the nature of a relationship between a provider and a purchaser of service. But, it is not true that we don't care what we carry. It was said at the outset of the meeting that in this audience there are three groups of people, those interested in agriculture, exports, and transportation. That's the way we look at it— that we're all in this together.

I'd also just comment briefly—[regarding Hanemann's] comments about our revenues. I started with Sea-Land in 1970, and, believe me, any year in which we earned 5 cents on the dollar has been a pretty good year for us, so I don't think those can be characterized as monopoly profits in any way.

I was quite concerned with the comments by Dave Dubois [Brittain International Freight Forwarding], because it seems to me, listening to [those comments], that we've had an almost total failure of communication between the shippers and the conference. I was particularly concerned with the comment that "little guys can't negotiate a contract." We want you to make your presentations to the conference. We want to listen to those. We want you to make your presentations to the conference chairman or the lines, or both. We need to reestablish some communication, because it was pretty clear to me that we have totally fallen apart in that respect.

Phil White [Excel Corporation] made a comment that shippers feel at the mercy of conferences. Now, I have to tell you that, as a carrier, carriers sometimes feel at the mercy of big shippers, because we don't think we have equal negotiating power vis-a-vis the very biggest shippers.

Bob Poteet [Texas Cotton Association] said that the act is not broken, so let's not fix it. We'd just like to say "amen" to that. We agree with that. This is not to say that improvements are not possible—through the regulatory process, or through legislation if necessary—but we largely agree that the act is not broken, so let's not fix it.

Peter Friedmann said earlier, "Neither shippers nor carriers are satisfied with the act." I'd like to amend that slightly, because I think carriers are generally satisfied with the act. There are improvements that can be made, but none of us are advocating repeal. We'd continue as is. Like I said, we think some improvements can be made, but if it's not broken, we don't want to fix it either.

Mr Diaz: I subscribe to everything that Mr. Ebeling said. Big surprise, right? Now that I've come to Houston, and I've found out that the carriers and the conferences are responsible for the killer bee invasion.

I thought I was going to come down here and be hog-tied by the Port of Houston, because we're the carrier that brought you intermodal movements from the west coast on PL-480 [USDA food aid program] business, and we're the carrier who brought you expanded intermodal daily service right in the Port of Houston's back yard. Instead, it was our customers who were hog-tying both Ray and me, and there's some good in that, and there's some bad in that.

I think both of us have heard substantive issues here. I think we've heard frustration. It's a very key issue. I think the notion that rates are too high is something we need to talk about. Yes, we hear you saying that rates are too high. Conferences are also faced with the claim that "Some conferences are too powerful." Other complaints we hear are: "Notification on rate increases is not good enough" and "conferences are not customer responsive." I'm sure I will hear some more, but those are the ones I'm listening to, and I think this is a good part of the system.

I have also learned a few other things in Houston—one, that the drinking water here is damn hard. I'll tell you, the tap water up in my room is hard stuff—a lot harder than in San Francisco. The other thing is, you can't even jog here, even at 6:00 in the morning. I went jogging today. I took the Bayou run, and it reminded me of two ships passing in the night. You've got two joggers; they're passing by each other, and the only thing that happens is that one guy says, "Hello," and the other guy says, "Hello" We're both jogging, but are we communicating?

We can't communicate. We don't address the issues—shippers and carriers, just like these two joggers. We're all jogging. We're all part of the export process. We can't get out of it. We're in the shipping business, and we're part of this export process, but for some reason, we're unable to communicate. We talk, but there's not real communication. I think that a common theme between both Ray's and my comments here on this issue is that we have a big failure to communicate.

I'd like to correct some facts, or at least clarify some facts from our mind. The profits in the liner shipping business—at least APL's approach to this— is that we add up all the revenue—eastbound, westbound and Eurasia. We subtract the costs, and that's the profit. So, when we look just at the westbound market, and say, "The westbound market—we're out here to put the rates up to get at the westbound market," I think that's inaccurate. I think Pat mentioned that 1984 was a terrible year, because all these shipping companies made bad decisions. Well, let me tell you, 1984 was the year that APL made record profits. We haven't come close since, and the reason is that when you add up all the revenues—eastbound, westbound, and Eurasia— subtract all the expenses, we made a heck of a lot of money that year, for us.

Despite popular belief, conferences cannot cure the ills of the world. We're still going to have world hunger with them or without them. Carriers and conferences cannot be held responsible for the whole problem. That is especially true of the two of us here [APL and Sea-Land]. There are gyrations in exchange rates that we have no control over. We have a President who doesn't seem to care about the trade deficit. There are all sorts of gyrations going on here. We've got carriers that are owned by their own governments, we've got carriers in the United States that are subsidized by their Government, like us [APL], and some that aren't, like Sea-Land.

So the statistics could be misleading. He's [Pat Hanemann] trying to tie poor export sales with transportation. I think that Ray's numbers are very accurate and consistent with our numbers. The price of exporting agricultural commodities after the Shipping Act is a heck of a lot lower than it was before the advent of the act.

Now, I don't want to argue about whether that's reasonable or not, because our costs have changed. We've become better businessmen. Frankly, we've been through rate war after rate war, and the fact that I can sit up here and talk to you as APL means that we have been able to cut our costs enough. We've been able to survive in a highly competitive environment.

Statistics can be misleading. We don't deal with crop size, fruit size, or disease. I know darn well that 1986 was a terrible year in Florida. I think that's the year they had the canker problem. They couldn't even bring grapefruit into California, or through California, if my recollection is correct. We don't deal with quota problems but we realize that they are a big deal. Japan has beef and orange quotas and, of course, they greatly effect the amount of our exports there. Japan has 140—million people—140 million rich Japanese people.

The reality of things is that we, as carriers, are really not making a reasonable return on our invested capital. I mean, all you have to do is go down and pick up the Wall Street Journal and check our stock price. Our price:earnings ratio is about eight, and it's the lowest price:earnings ratio of almost any transportation concern you can find. The reason is that the people who invest in our company aren't happy with our return on invested capital.

I think the Japanese carriers lost $500 million in 1987, and some of them are losing $1 million a month on each string that they're moving in the transpacific right now. So if this debate is about raising the rates or lowering the rates, I think the fundamentals just aren't there. I think what we need to do, and what we really have to be responsible to do, is focus on our joint needs and try to avoid the confrontation that we're in now, because there's no way we're going to get together if we're confrontive. We need to deal with your needs as customers, and our needs as carriers, because we're in this together.

Thank you.

Mr. Friedmann: I'd point out some similarities and similar words used in both Ray's and Mike's discussions just now, and that is the need for communication. It seems that there are a lot of you, as shippers, who get into discussions and good communications with your Sea-Land or APL marketing folks or Maersk or any of the other carriers, and you get all sorts of good proposals worked up, and you're encouraged to make a service contract proposal for westbound Pacific routes. Then, unfortunately, the word comes back, "Well, sorry, the conference just wouldn't agree to it."

So, I don't think that there is necessarily concern that the individual lines aren't out there marketing and communicating. The fact is, there is frustration with the ultimate response, whether it's the TWRA, who has publicly said they're not going to enter into service contracts, or responses from other conferences after carriers such as APL or Sea-Land have approached them with contract proposals.

So that leads us to the first question, and this panel is organized around three questions.

The first question is, "Should the ocean shipping conference system be eliminated?" Perry?

Mr. Walker: The discussion has to focus on the conference, not on the individual shipping lines, and when you establish cartels in this economic environment today, it's entirely inappropriate. We heard earlier from Patrick [Hanemann] how competitive the citrus business is, as is all of agriculture. It's a world business, and it's becoming more and more competitive.

To give you an idea of how competitive Patrick is, he and I tell the story often about hiking up in the high Sierras, just east of the San Joaquin Valley. We were walking down a trail and we came upon a huge, huge brown bear. Patrick saw the bear, and he dropped down immediately and started taking off his hiking boots and putting on a pair of tennis shoes. I said,

"Patrick, what are you doing? You can't outrun that bear." He said, "Perry, I don't have to outrun the bear. I just have to outrun you!"

That's essentially what the competition is all about. We are in business to make money. My concern is not whether Sea-Land makes any money, or APL makes any money. My concern is whether I can make money, and I have to watch costs, and I have to watch my revenues, and I have to watch all the financial numbers and structures. We all have to be as competitive business people. What I want the shipping companies to do is to bring their goods and services to my doorstep, and I want the ability to shop around. I'm not concerned—I don't want to listen to their explanations of how much money they have to make. I want more [knowledge] of, what's it going to cost me to ship my oranges, or my lemons, or my grapefruit from either the west coast or the gulf or east coast, to the export markets.

Their financial concerns are their problems, and they're going to come to me with their most competitive price. So if you ask me in a short question, "Do I think the cartel's appropriate in today's environment?" I'd say, "No, they're not, and they should be eliminated." I think in the larger context of the direction of agricultural policy in the United States, as far as trade is concerned, the "yes" is punctuated perhaps in capital letters with an exclamation mark.

You recall that Clayton Yeutter, [then] U.S. Trade Representative (USTR) put all the agricultural programs the United States has on the table for negotiation with three specific proposals: (1) that we decouple production subsidies from export subsidies; (2) that we freeze in place and roll back import barriers; and (3) that we harmonize worldwide all the phytosanitary standards.

The whole concept behind the USTR's proposal is that the United States has a comparative advantage in world agricultural industry. That means that the citrus producer in the Rio Grande Valley has a comparative advantage over the citrus producers in the Southern Hemisphere and the Mediterranean basin, as well as the peach and nectarine and grape producers in the same areas. That means that the cotton producer in the United States can compete on a worldwide basis with other cotton producers. That means that the wheat, and corn, and soybean producers can compete. If we can't compete, then we should not be talking about comparative advantage.

My personal opinion is that we can compete, but only in a free market environment, where everyone is bringing goods and services to each other's doorstep, and we're picking and we're choosing those which best serve our economic interest.

So, while it's important that we communicate—it's definitely important that we communicate—I am not in business to keep the carriers in business, and they're not in business to keep me in business. Agricultural companies have gone through tremendous dislocation in the last 5 or 10 years, and you don't see a whole lot of welfare checks coming out of the carriers to agriculture, and you shouldn't. It's not appropriate.

So, from my perspective, in this new world competitive environment, we all are going to have to compete in the next 10 or 15 years, on into the 21st century for sure. We have to have a free and open market interplay and integration. So, for me, no, [cartels are] not appropriate.

Mr. Ebeling: Well, we have a slightly different view. I'd like to take a few minutes to lay out the general reasons why I think that shippers and carriers both should want to see the conference system continue. Criticism of conferences usually begins with the assertion that they are anticompetitive associations of carriers, formed to keep rates higher than they otherwise would be. I don't think that is true. In fact, I believe the present conference system actually ensures rate competition, because the existence of conferences ensures that there will be more than a few carriers to serve a particular trade.

If conferences ceased to exist tomorrow, shippers—whether of agricultural products or auto parts—might well benefit from lower ocean rates, when the predictable rate will fall. But those rates would not last long. Rate wars would inevitably flare up in conference-free trades, killing off weaker carriers, and leaving the field, or the ocean, to a few survivors. Rate wars flare up even today where conferences should, in theory, prevent them. So the notion that "conference" is just another word for a "monopoly" is demonstrably untrue.

Competition from outsiders and independents is fierce in all major trade lanes, precisely because they often choose to price their services at a percentage reduction off the conference tariff, and find enough customers to survive. Just as important, intense competition can be found within the conferences themselves. This internal competition plays out most obviously through independent action, but it is more pervasive in the day-to-day negotiations necessary for reaching agreements on service contracts and common rates.

There are two other factors that prevent unfairness from creeping into the conference system. The first is openness. Conference membership is not restricted in any way—an important difference when compared to non-U.S. trades. The second is regulatory supervision. The FMC reviews all conference agreements when filed, receives minutes of all meetings, and regulates tariff filing and enforcement, all with an eye to protecting shippers' interests.

Now, let's turn briefly to the Shipping Act of 1984. It has been said in criticism that the act expanded carriers' immunity to antitrust actions. In fact, that expanded immunity really did nothing but clear the way for conferences to provide intermodal services. Led by Sea-Land and APL, [this] has been of enormous benefit to shippers.

In today's transportation marketplace, conferences must be responsive to shippers. Strong, nonconference competition, independent actions by conference members, and the proliferation of service contracts all guarantee that conferences will be alert to changing shipper needs. If anything, conferences will become even more responsive to shippers as they adapt to life under the Shipping Act.

Someone once said, and I think, again, it was Churchill, that "democracy is the worst form of government, save all the rest." That's about how we feel about the conference. So, in short, our position is, no, the ocean shipping conference system should not be eliminated.

Thank you.

Mr. Diaz: Just for a point of clarification, I think we should refer to conferences and rate agreements as being the same thing, for the purpose of this panel. I believe that rate agreements are, technically, really what we're talking about, here, not conferences: but surprisingly, I'm in complete agreement with my friend Mr. Ebeling over here. I don't think that conferences should be eliminated. Absolutely not. They provide a mechanism for the carriers to stabilize rates; the umbrella allows for the heavy investment necessary to maintain and improve our services, which has been a common theme that I've heard today: There's not enough service and not enough equipment.

The conference is a tool that can prevent cutthroat competition and wild swings in freight rates and service packages. What conferences are not: They're not a closed-door cartel system. We have an open, unrestricted, and regulated conference system in the United States. Conferences do not eliminate competition. We are still in a highly competitive business, despite the fact that we have conferences.

In fact, conferences, in my opinion, foster competition. Not only is the competition intense among conference carriers, but also the competition is intense between conference carriers and independents. The independents benefit by the ability to set prices and establish services under the conference umbrella. It is ironic that agreements that are under fire for stifling competition have served to provide an environment that fosters the growth of carriers who provide the additional competition they're criticized for.

Without conferences, the market would become more chaotic, with wild pricing swings used to round out vessel voyages in a liner business where variable costs are much smaller than fixed costs. This is a key issue. Ostensibly, there's a theory that an empty slot with a little bit of cargo in it is of more benefit to the carrier than an empty slot. This is what I call incremental spot-pricing. This spot-pricing is the last thing that anyone needs. I wonder how much discipline—I wonder how disruptive this spot-pricing would be to everybody's ability in this room to compete with each other overseas.

Mr. McCurdy: I think I'm going to surprise some people—maybe Perry as well. Du Pont, for whom I work, has been instrumental in fashioning the 1984 Act, and its use. We have service contracts, for example, with both of the carriers represented at this panel. We don't believe that the question is, "Should the conference system exist or not exist?" The reality of world trade is that conferences exist throughout the world. The legislation that might be passed in the United States

would affect only those that touch our shores. The carriers that we deal with conduct business not only in the United States, but abroad as well, so the system is going to continue to exist, regardless of what U.S. Commerce Department or what the U.S. Congress does.

The question, I think, is, rather, not the continued existence of the conference system, but whether or not the system is managed properly, in the interest not only of its members, but of its customers served. It is in that area that Du Pont would work strongly to try and fix the conference system.

We've heard today, for example, that there is a lot of talk back and forth, through the media and elsewhere, but very little communication between conference management and the shipping community. I would cite, for example, my own concern. Du Pont is one of the several largest Pacific shippers in the United States today, both east and west. Yet, we in Du Pont have had exactly one meeting with the chairman of the TWRA in 4 1/2 years. That does not indicate that there's a tremendously high level of communication going on. I might add, it's not because Du Pont has not sought those meetings.

On the other hand, we have had numerous meetings with APL, with Sea-Land, and with other carriers who make up the TWRA. So it would appear that the problem that exists lies with the conference management, and with the fact that conference management is standing between the carriers and their customers. That's where we feel the problem lies right now.

Elaine Chao [former FMC chairman] spoke, and was quoted in the *Traffic World,* November 17, [1988] edition, where she indicated that "There are two ways," and I'm quoting now, "to reduce the trade deficit—grow out of it, or shrink out of it... Raise our exports to the same level as that of imports by expanding the economy, creating new jobs, and building our economic power, or go protectionist. Restrict imports by imposing tariffs and quotas, or by the outright banning of products." She concluded with the statement, "I believe we can bring trade deficits into balance without unnecessary protectionism by doing just what we have been doing—building new markets overseas. That's the key to restoring profitability on the U.S. flag carriers, and it's also the key to solving our trade barriers, and perhaps bringing some of the deficits down."

Sea-Land recently—and I'm stealing your thunder a little bit here—published in an internal publication—the July 11, 1988 edition of *Making Waves,* put together by their marketing department—what they call a "Sea-Land belief statement." This practice has been common among many corporations in the last 2 or 3 years to establish a "belief statement," and I'd like to read that, as well.

"Sea-Land believes its business is the identification, recognition, and satisfaction of customer needs. Sea-Land believes it must, and will, work with customers as partners, arriving at the best solutions for them. It will strive to provide a continuous stream of ideas and innovations to make its customer's business operate more efficiently and profitable, and it will customize and package its services to meet the special need of that business. Above all, Sea-Land believes it must and will demonstrate its commitment to its customers through its attention, attitude, concern, enthusiasm, hard work, honesty, responsiveness, spirit, and vigilance."

That's the kind of attitude that we at Du Pont, as a shipper, applaud. That's what we're looking for. Our problem is that the managements of the conferences, and I take the TWRA as an example, have not adopted the attitudes of their member carriers. I mentioned Ron Gottshall's lack of willingness to deal with us on a one-to-one basis. I note that, although we have five existing service contracts in the Pacific, we have not even been able to open negotiations for one with the conference and the TWRA. I note also that in response to the TWRA's efforts, we at Du Pont determined that we could have a loyalty contract, which is different from a service contract, and we believe it can't be prohibited by conference activities. TWRA opposed that, a show cause order was issued by the FMC, and it's now under consideration by that body.

The activities of the TWRA management are in direct opposition to the statements—printed and verbal—that we've heard today by the carriers. So, it is not the conference system that we oppose. It is the current management of that system, and the fact that the system does not focus on its customers.

I want to conclude with one other thing. I recently attended a logistics management council meeting in Boston where they had the 3,000 or 4,000 of the country's most important transportation people, on the shippers side, meeting with many carrier representatives.

Seventy-five percent of the conversations there dealt with a new system called "supply chain management." That system, in a nutshell, translates customer need, customer desire, through an automated computerized system down to the procurement of the raw materials. That will require just-in-time manufacturing and incorporate that concept throughout the entire chain.

Obviously, if that system is to work, you must have reliable transportation needs through, principally, contracts. That mechanism exists today with the air community, with the truck community, with the inland marine community, and with the rail community.

If the conference system—typified by the TWRA and its management—has its way, the supply chain management concept cannot work. Well, it is my belief that the supply chain management concept will take over, as it is the hope of the United States. I'm afraid that if conference management stands in its way, the conference management will be the casualty, not U.S. commerce. So, it is not the conference system we oppose. It is the current management of that system that we oppose.

Mr. Friedmann: Let me throw out a question here. Who's in charge here?

We're hearing that individual carriers will negotiate with shippers. They want to work with shippers, they want to be flexible, they want to serve our needs, they want to promote the needs of the customers and be responsive and innovative, and so on. Then we hear that the problem is really the conference management.

Well, Bill and I share the views that some conferences have acted responsibly and others haven't. The bottom line is, who are the conferences? Who are the rate agreements?

A rate agreement is an agreement between individual carriers filed at the FMC. Individual carriers constitute a conference. Individual carriers pay the salaries of the management of the conference. Individual carriers have meetings all over the world, I assume, to set conference policy.

I assume when carriers have the meetings, it's not to go sightseeing in these different parts of the world, but it is in fact to set conference policy on service contracts and loyalty contracts. I have a hard time believing that there is a conference management acting independently, adversely and contrary to the desires of the individual carrier members.

Does anybody wish to comment on that?

Mr. Walker: TWRA is doing exactly what they should be doing as a cartel. There has never been a cartel that was designed to service customers or consumers. That's not their job. Their job is to look out for their own private self-interest. That's exactly what they are doing.

When TWRA came down with the edict last spring that California shippers are going to have to certify everything that goes into a container, and I called up there for some kind of an explanation, I got a dead phone—nothing. There was just an edict that came down. It wasn't until after a huge, huge, huge outcry, [that] they grudgingly met with us and said, "Okay, now we'll rescind it." It really isn't a problem that shippers can solve on their own.

To me [it's] the way a conference operates, if you're going to take TWRA, that's exactly the way a cartel operates. There are no "nice" guys in a cartel.

If we're to take an example of what would happen if we didn't have the cartel, look at the other segments of the transportation industry—the trucking industry, the airline industries. Once you break out of the cartel mode, you break away from that shield of the Federal Government to protect your market share, to protect your bottom line or whatever you're trying to protect. Then you have a much more dynamic situation, and you have new players. You may have different winners and different losers. In the long run, you're going to have more winners than you're going to have losers.

For me, I think the rate agreement aspect of these cartels is doing exactly what its supposed to do. I don't know if you can change that structure, unless you break away from that antitrust exemption.

Mr. Ebeling: To some extent you're right. You have met the problem, and it is us. The conferences do what the lines want them to do, and we're the lines. We can fix it. We have to fix it.

I think Bill McCurdy's comments are some of the most constructive comments that we've heard in years. It takes us away from a theoretical, philosophical debate and, I hope, will get us down into some real practical aspects of the problem, in terms of how conferences relate to shippers in 1988 and beyond.

We don't have all the answers for that. A lot has changed in the last 4 years, since this act in the last decade, in our business and in yours. It is probably true that the conference system has not kept pace with all of those changes.

These are problems that we can fix. We intend to fix them. Thank you.

Mr. Diaz: I think this is a good example of failure to communicate. I agree with Ray that Bill's comments are very constructive. It's really one of the points I've written down, and I've written down again. We've got to do something about the management of our conference, and the way we serve our customers through the conference. The conference really is us. We're the conference. I don't really understand how a carrier can say that they can't do something because the conference won't let 'em. If a carrier wants to do something, it can take IA [independent action] and do it. There's mandatory IA out there.

We continue to fail to communicate, because we communicate in absolutes. "We absolutely have a cartel." "We absolutely are going to screw the shipper." "We absolutely are going to do this." "We absolutely are going to raise the rates." That is not factual.

There are no absolutes here. We keep on arguing on either side of the equation. We need to get in the middle. I agree that we—I mean I've heard it over and over and over again today—that we need to become more customer sensitive through the conference mechanism. I guarantee you that that message is going to get taken home. APL and Sea-Land have a lot to say about how the TWRA runs.

So, if you have a problem with the TWRA, it is not a problem with Ron Gottshall [Managing Director of TWRA]. It's a problem with Mike Diaz. We need to make the system work better. Thanks.

Mr. Friedmann: I guess our message is, if you're a member of a conference, were going to hold you responsible for the activities of that conference.

Mr. Diaz: Let me comment on that, too. There's a bad misconception going on around here. We do not control the carriers in the conferences. Each one of these individuals is an independent company. For us to be totally held responsible for what each one of these carriers does inside each of the conferences is really a bad misconception.

For example, if one of your customers came in and signed a service contract with the TWRA, and you're going to pay $3,000 dollars a box, and one of our good conference members decides to take IA, which is well within his rights under the Shipping Act, and sets his rates at $2,500 dollars for no commitment. How could we be responsible for that?

You have to be careful when you start thinking about conferences. You need to deal with them in terms of what they really are. Sometimes the decisions in conferences aren't even popular to us.

Mr. McCurdy: I'd like to add a couple of comments, if I may. There are functions that the conference can serve. For example, a rationalization program. If you have 25 carriers and there's a 100-percent, 150-percent capacity in the marketplace, some of those carriers are going to go under. Some of them are going to lose. If you have arrangements with those carriers, and they're gone, you can't get your goods to market.

What you want to do is sustain those who are the most efficient and the most effective and profitable. Carriers are entitled to earn a profit. I think that goes without saying. Unfortunately, it hasn't been said. They are entitled to earn a profit.

If we can't work with those conferences, then we have to work with the individual members. If the conference management can change and recognize that, and let us deal with those people who can satisfy our needs. If there's a conference with five members, three of which have reefers and two don't, then don't let the two who don't have reefers interfere with the negotiations for the other three. That is a significant problem. It is a problem for you. With the diversity that we have, it is a problem for us as well.

To manage our logistics properly, we require contracts. If the TWRA persists in its beliefs, we can't have that contract. So, we're going to go to an independent. If we can't find an independent, we'll make our own line. Du Pont had $30 billion in sales last year. We spend $1 billion in transportation every year.

If we can't get the carrier to cooperate with us, we'll have our own. We will, if we have to. You can also work through shippers associations. That's not a threat. I'm just pointing out that as a customer, if you can't get your supplier to deal with you, find another way. Be innovative.

I think when the carriers realize that, they will force conferences to be innovative and responsive to you. These two carriers have tremendous natural advantages in the United States. The conference actually, in my personal opinion, is hurting them, because they have a tremendous natural advantage that we would like to see them use.

Mr. Porter: [a member of the audience] I'm Ken Porter of Plains Cotton Enterprises. We're cotton shippers. I have really enjoyed and agree with nearly everything that Bill has said. I do have one big problem with the statement that he made a moment ago. I don't know if I'm taking it out of context, but we, as cotton shippers, are not guaranteed that we can make a profit.

I take great exception to the statement that carriers are entitled to make a profit. Nobody guarantees that we're going to make a profit. We stay in business by our "smarts" and making the right moves by staying on top of things.

Mr. McCurdy: It's a misstatement on my part.

They're entitled to the right to earn a profit, I should say. I'm not saying they're guaranteed a profit. They have the right to be competitive, and through their hard work, to earn a profit. They should not be put in a position where they can't. That's what I'm trying to say. It's not a guarantee. No one has the right to a guarantee.

Mr. Friedmann: We'll move on now to the second question.

"Should ocean shipping conferences have the right to restrict or eliminate the use of service contracts or loyalty contracts by their member carriers?"

Mr. Walker: From my perspective, no. They should not be able to restrict or eliminate the use of contracts. Under the current system, that restriction or elimination absolutely is essential to the preservation of the conference. The whole concept of a cartel in classical theory is that you're going to have concerted action by members and, number two, you're going to have internal discipline by members.

The IA is a threat to internal discipline. Again, in classical theory, we all know cartels formed by unequal members—the weaker wanting to be protected, and they latch on to the coattails of the stronger. The more efficient carriers—by the way, I would underscore [that] Sea-Land and APL have advantages, at least from my perspective and my experience with the carriers, that their foreign competitors don't have—I think that in many ways they are hurt by the cartels.

Nevertheless, the way I see it, the stronger, more aggressive carrier is going to seek out the business, and because they are more efficient and want to be more profitable, they are going to be far more aggressive in the marketplace.

The less efficient, the weaker carrier is going to attempt to block it. He can't compete. If the conference does not eliminate the option for independent action, as they tell you very frankly, you'll destroy the cartel. The aggressive carrier is going to go out and do the business he has to do to stay in business.

From my perspective, if we need to have this cartel with all the immunities implied therein, then you have to give the equal economic and political clout to the shipper and let him go and negotiate the most favored, and favorably, rates that he can negotiate.

Mr. Ebeling: Let me get a minor usage point out of the way before we get into this question. I include loyalty contracts under the term "service contract." They are essentially the same thing. There is no real difference between the two, beyond the measurement of commitment. It's measured in percentage terms under a loyalty contract and in numerical terms under a service contract.

With passage of the Shipping Act of 1984, conferences have the right to restrict or prohibit the use of service contracts. We think that's as it should be.

Most of you remember that service contracts were not permitted in any form prior to the 1984 Act, because they were viewed as being, inherently, discriminatory. Liner operators charged according to generally available common carrier tariff rates.

The 1984 act changed that by permitting service contracts only on condition that the essential terms be made available to shippers in similar circumstances. The act's intent was to make the service contract [a] closely tailored alternative to tariff rate making, and to make it consistent with the common carrier obligations not to discriminate.

The writers of the Shipping Act recognized the role of conferences in fostering stable trades and enhanced service. They also knew that a conference, denied the power to control service contracts, would be too weak to do the job it was created for. That's why the act explicitly states that conferences can regulate or prohibit their members use of service contracts. We think that's as it should be.

Thank you.

Mr. Diaz: Once again, I'm right consistent with my friend over there, Mr. Ebeling. The Shipping Act gave us the right to control service contracts. I think conferences ought to have that right.

First, carriers inside or outside an agreement should have the same rights, that is, to negotiate and sign service contracts, contracts to provide services for our customers.

I see no difference between service contracts and loyalty contracts except that the volume is counted as a percentage of the customer's business instead of a number of units revenue times 40-foot boxes, et cetera. We have the same speech writer too.

Any agreement's regulation of contracts is known before any carrier joins an agreement. Therefore, we're exercising our choice to have our agreement regulate this portion of our business. This is our choice. We're part of the conference.

Conferences' and agreements' ability to regulate contracts helps to maintain stability between the carrier's tariffs and contract pricing. It, therefore, also helps to maintain stability in the overall pricing structure in the trade.

Now, I'm sure you're asking yourself, "What does this mean to me?"

I believe it helps you and here's why. I going to give you a real life example in one of our prime value-added arenas, our reefer service. In March of 1985, we at APL were instrumental in signing the largest citrus exporter in the Pacific to a service contract.

The contract committed the customer to guarantee a tender to the conference [of] 650 40-foot trailers. This was going to go to the carriers. In exchange, the customer was committed a 15-percent discount, a fixed rate, in the service contract from his tariff by the carriers.

It soon became clear that an innocent and obvious proper use of the contracting system had disadvantaged every one of this shipper's competitors overseas. Despite the fact that Dole puts a blue sticker on its orange, differentiation for oranges in Hong Kong, obviously, has a strong price bias.

The Chinese care about how much it costs per caddy [an orange carton size], not whether [the caddy] came there by service contract or tariff rates. Within weeks carriers inside and outside of the agreement were offering the same discounted rate for one 40-foot box shipped. This rate first appeared in contractual form and latter became the tariff rate through various vehicles. However, everyone lost from the ordeal.

The original customer lost. He was stuck with a 650-FEU [forty-foot ocean container] commitment and a fixed rate. A broad spectrum of customers lost. Everyone was treated differently based on the price mechanism that was used. Some customers had contracts, some had access to the rate, some later had access to tariff rates through various vehicles.

Competitiveness overseas also was affected by the ocean freight rate at this time. The carriers lost. Rates tumbled and the same amount of cargo was shipped on

our most valuable pieces of equipment, reefer boxes, as would have been shipped if there had been no reduction in the rates at all.

Unfortunately, this scenario was not limited to citrus—we played it out again and again. Mixed chilled beef, poultry, lumber, and wastepaper.

Incidentally, if there's any question on rate reductions—on what that means to carriers, let me assure you that rate reductions find their way to our bottom line much faster than volume increases do.

Without conference regulations of contracts, one of the main underpinnings of the act, fairness to the users, would be in jeopardy. By regulating, we keep everybody on an even footing overseas.

Thank you.

Mr. McCurdy: The comment has been made that a service contract and loyalty contract are basically the same thing. I have to, unfortunately, take credit for part of the loyalty contract situation. We were the ones who conceived of the idea in response to TWRA's banning of service contracts. We saw a hole in the law that allowed us to have loyalty contracts. So, we ran through it.

There is a significant difference between the two. As already mentioned, service contracts are written for a discrete volume. A given number of dollars, a given number of boxes or whatever. Whereas, loyalty contracts deal in terms of requirements.

There are other differences. Service contracts are individually negotiated between a carrier and a given shipper. Although the first loyalty contract may well be negotiated individually between the given shipper and carrier, thereafter that loyalty contract must stay available to any other shipper who wants to take advantage of it. Because of that constraint, future negotiations on loyalty contracts are greatly restricted.

There's the element of service in service contracts to someone like Du Pont. Sixty-five percent of what we ship is regulated, and this is a very critical element. But it is not as critical in a loyalty contract.

Loyalty contracts can be used in places such as China and other emerging markets. Du Pont does not know how much product we will sell in China next year or the year after that. We can't even make a good estimate. So, we can't sign a good service contract with that kind of a market, because we can't be sure of what we're going to do.

We can, however, sign a loyalty contract and the carrier then can participate in the growth of our business and retain a certain percentage of it.

So, there are significant differences in my mind between loyalty and service contracts. Both should be available to the shipper so that it can customize its business with the help of the carrier, and so that both may profit from that movement.

The second statement that was made was that, before 1984, there were no service contracts. I would beg to differ. Du Pont had at least one prior to 1984

The service contract idea, in part, came from Cliff Sayre [of Du Pont] when he was negotiating for the passage of the 1984 act.

Now, there have been a lot of comments about whether service contracts work or don't work, whether loyalty contracts will work or won't work. If you go into the domestic field, when there was a deregulation of the rail community, the rails largely opposed the use of the service contract equivalent on the domestic side.

Today, they beat paths to the doors of at least the larger shippers to try and get contracts. I think that same would be true if the carriers and their customers would sit down and discuss the needs of both and come to some kind of contractual commitment to cover those needs, rather than just arbitrarily saying, "no you cannot have a service contract; No, you cannot have a loyalty contract."

I have a suggestion: "listen up," carriers, this is new. Du Pont would suggest that in the revision of the 1984 Act—rather than taking the carrier position and saying that there will be no independent action on any form of contract, or [taking] the shipper position of saying there will always be independent actions on all kinds of contracts—that we work a compromise that I think might work for both parties.

In those conferences which wish to control contracting among their membership, there will be no right to independent action on service or loyalty contracts. However, there will be a requirement that that conference management sit down with any shipper who desires to do so and negotiate in good faith, and enter into a contract on behalf of that conference.

Further, if certain portions of the conference membership cannot satisfy the legitimate needs of the customer, they should not be permitted to participate in conference deliberations over that particular service or agreement. They should not be permitted to exercise a voice or a vote in that negotiation. This requires faith and a trust that these will be legitimate negotiations, not like the TWRA, which says "sure, sign this contract', and you find out you're paying rates that are higher than the tariffs and you get no service. This is legitimate, good-faith negotiating. If they are unwilling to do that, for conferences that will not offer that, then there should be the right of independent action on both loyalty and service contracts.

We will propose that. We will back it up. But it requires working together and partnership.

Mr. Diaz: I'd like to follow up on Bill's suggestion here, and I am well familiar with Du Pont's positions on these issues, and Bill's.

Bill, your point is that there's not a mandatory right of independent action applied to service contracts, but the conference must negotiate a conferencewide contract in good faith.

Remember, Du Pont is, frankly, a major, major customer with lots of volume in lots of directions around the world. [It is] a customer that any group of carriers wants to keep happy.

TWRA is concerned about the welfare of the small shipper, and that's fine, but I think that small shippers would like to speak for themselves, rather than have TWRA be their advocate.

In here you have a proposal that I think might draw a split between the negotiating position of a Du Pont, and the negotiating position of a relatively smaller shipper. Do you have any thoughts on that? It seems to me, you're going to get a better reception from a conference than a small shipper.

Mr. McCurdy: I think that's true; I think that's true no matter who we go to, no matter who the supplier is. If Du Pont walks in the door, we get a better price, and we get better service because we're larger. In the American system, that's the way it works and that's the way it functions.

What I am saying, though, is that the conference should not take the position as the TWRA has done. They will not even walk in the door and negotiate with you, and I am saying that [if] they take that position as conference management, then there should be the right of independent action so that individual members can negotiate and serve those customers—legitimate customer needs.

If the conference management is willing to negotiate, and therefore, get rid of the right of independent action, then they should do so in good faith and they should negotiate with anyone who walks through the door. That does not mean that Du Pont with a $1 billion worth of transportation expense every year will get the same deal as the guy who walks in with four boxes. But it does mean that there will be good faith negotiations based on those volumes with each party.

Mr. Hanemann: [a member of the audience] A couple of clarifications—I don't really have a question, but I do have a couple of things that were said that I think need clarifying.

First of all, like Bill, I'd like to point out that Castle and Cook [parent company of Dole Citrus] also had a service contract. In fact, the first reefer service contract westbound negotiated prior to 1984 was with your company, Ray. And, more importantly, it was signed by me on our side, and by, of all people, Ron Gottshall for Sea-Land.

Second, I think, once again, we're facing a problem of differentiating, not between service contracts and no service contracts, but between bad service contracts and good service contracts.

The service contract we negotiated then had a "Crazy Eddie" clause, no liquidated damages, and there were no service commitment specifications, which are the embodiment of the service contract structure.

The difficulty is that your memories of service contracts go back to 1985, when you were in a desperate, overcapacity situation. It seems that you were really prepared to do anything in order to get our business, and you negotiated a "bad" service contract.

You're not in that position now. The fundamentals of the business have changed. One of the fundamentals is, you're no longer losing money. Are you making bushel baskets of it? Heaven's no. Neither are we. But we've all chosen to be in the businesses we're in, and there's a reason for it, I assume - satisfaction with a profitability profile of each of our businesses is something that we can accept.

But, the fact is that your situation has changed dramatically from 3 years ago, and I would suggest that your attitude about service contracts could be qualified in keeping with that.

The third thing is, Mike, you may have been able to tell since you started your comments, this is no less emotional an issue than the first one we talked about, which was conferences.

Fourth, one misrepresentation that I simply cannot tolerate. Mike, I'm shocked at you. Chiquita has a blue label. Dole has a red label!

Ms. Friedheim: [A member of the audience] My name is Amy Friedheim, I'm with the USDA Office of Transportation. Obviously, conferences are composed of carriers. I've heard this afternoon that conferences do largely what the members want them to do. I wonder if someone can explain why shippers can get service contracts from carriers that belong to the conference going in one direction in the Pacific trade, but not from the same carriers moving in the other direction under another conference system.

Mr. Diaz: I'll take this alphabetical order.

In ANERA, the Pacific eastbound conference, there are numerous differences in what's being shipped. First of all, we're shipping stuff, out of ANERA, that is going directly into the distribution chain—although a lot of agriculture products break this mold. So, we're much more on what Bill would call "a supply chain management pace."

We're shipping garments, footwear, furniture, things that are going into stores. And the need to get them there is much more important than the price of the freight. I mean that service side of the business, eastbound, has been a much stronger need of our eastbound customers.

Now—let me just give you an analogy, if you walked into Nordstrom's in downtown San Francisco and you went to buy a raincoat, and they didn't have the raincoat, you'd go across the street and buy the raincoat you were looking for at Macy's.

So, the point of sale where that garment has been marked up 4 and 5 times is the critical piece for a retailer.

In terms of his basic point, I have to admit total agreement with Mr. Hanemann on the westbound side that things have changed from 1985 to today. The fundamentals have changed. As a result of what you guys are telling me, I will figure out a way to do service contracts westbound. But I still don't know how to solve the problem of cost competitiveness of your goods overseas.

The cost of the ocean freight becomes the key to competitiveness overseas for that commodity. I don't know how to solve that problem.

We get ourselves into a problem where we are getting this ever-spiraling rate reduction where you're shipping agricultural products and partially finished raw materials.

The second thing I don't know how to solve [involves] the complexities of when a carrier does sign a service contract.

Clearly, in the westbound trades we are putting new things into motion that we aren't used to having to manage and deal with, and this competitiveness is only one thing.

And see, we're one carrier, and you are thousands of thousands of thousands of shippers, so the problem is that we look at it from a different perspective. You're one shipper looking at us and wondering why we don't sign a service contract, but we're looking at trying to do business with all these customers so the sheer numbers of things change our perspective, too.

Frankly, I think its time for us to start thinking about approaching the westbound trades differently because it was music to my ears to hear the USDA talk about higher value commodities. I think that's the key. I think there's a third way, maybe. Maybe it's implicit in Elaine Chao's first side of the equation, you do more exporting. We have to export more high-value commodities to overcome this deficit. It's not really plausible that you can take 70 or 80 containers of rice against one load of VCR's. So, I think it's nice to hear that we're looking at high value.

Mr. McCurdy: If I can, for just a second: Many of you may have been involved with just-in-time concepts in Japan and now Tom Peter's concepts of the supply-chain management, as he's discussing it. But those concepts do not differentiate between the kinds of products you're dealing with. Basically what we're talking about in that context is taking the demand of the customer—the final customer—and through computerization and through systems, translating that all the way back down the chain to reflect, in real-time concerns, the actual purchases of the raw materials that go into making all those things.

Obviously, when you do that, you have a very critical timing element and service element involved in the logistics and transportation. During the same conference, a young lady [spoke] that joined Tom Peters in writing his book. She said, "According to the statistics on logistics costs, 25 cents of every dollar of a consumer product is represented by the cost of logistics in one form or another." That's beyond just pure transportation, mind you. That's also inventory cost and a lot of other elements. But that's a lot of money.

The United States has not paid any attention to that—twenty-five cents on every dollar. That's more than the profit that almost any manufacturer makes, and yet they've not paid any attention to it. They are now, and because they are, the transportation industry and the logistic management within corporations are going to be upgraded in their importance and their concerns. That means more contracts. That means more concentration on service, not so much price. Price is important. It's got to be competitive. But the things that we're going to be managing in the future are service and time, not so much the concentration on the price.

So, if APL and Sea-Land want to get our business in the future and others like us, they'd better concentrate on time and serving our customized needs and compete on that basis, not on price.

Mr. Ebeling: Just two quick comments on some of the things that have been said. First of all, Pat [Hanemann] mentioned the "Crazy Eddie" clauses and the like. Maybe I misunderstood him, but it sounded like he was saying we support them.

We certainly don't. We do support service contracts. We just think there needs to be more mutuality of obligation in these service contracts and we think clauses like "Crazy Eddie" destroy that mutuality.

We need to look at his suggested middle ground and think about it. But I also say, at first blush, it seems to me to be one of the most constructive suggestions I've seen in a while, because, again, it's taking us away from black and white. It's taking us away from either IA or no IA, or maybe coming up with something in the middle that we can all live with. Thank you.

Mr. Friedmann: The Shipping Act has been criticized from all sides for being vague in various areas. One of the areas it's vague in is the definition of a loyalty contract, and whether independent action applies. It's vague in some aspects of service contracts and so forth. So I would say this: There is no need for any statutory change or regulatory change to implement what Bill McCurdy has suggested. The power is in the hands of the conferences right now. Conferences are free to prohibit independent action on service contracts, but they don't have to prohibit them.

Mr. Bourne: [a member of the audience] My name is Perry Bourne. I'm with IBP [Iowa Beef Processors]. We're a large meat and pork shipper to the Orient. One of the things that I'd like to clarify with Mr. Diaz that is of concern to me is—as was mentioned by some other members earlier—the carriers are not, nor are the shippers, guaranteed a right to make profit. Why are we so concerned about discriminating against shippers when that's done all the time? It's done amongst commodities, and in the domestic market, it's done all the time.

A shipper will negotiate a confidential contract with a motor carrier or with a rail carrier. Why is it that we can't have that kind of concept on the ocean side? I would advocate that there should be some sort of compromise between the independent action concept and service contracts. I think that's a positive statement. But I don't think we should be so concerned about what we saw in '84 and '85 when rates for people like ourselves, that might have guaranteed maybe 700 to 1,000 containers, were granted special rate for volume. Right behind us, there might have been a carrier that entered into a service contract for the same commodity for maybe 100 containers or 50 containers.

That really wasn't the fault of the shipper. The carriers were just afraid to lose any business. I don't see where that's a relevant point. You either want the business or not—it's either good business or it's not. If there was something done in the law to accomplish confidentiality of the contracts, I would try to push for it.

We should be able to sit down, either with the conference or with the carrier, and decide on what the program is. Is what we're proposing acceptable to that carrier? Can he make money at those rates? Does that fill a need he has? And then a deal is made or a contract is consumated. But then we shouldn't have to worry about the other people that might be shipping that commodity or whether they have the right to have the same rate.

Now, similarly situated shippers have the right to the same contractual terms. But the problem is, how is a carrier or shipper that can contract 1,000 containers similar to somebody who can contract 50? The problem is, as the carriers vie for position and try to control the ocean freight market, or make sure they didn't lose

market share, they act irresponsibly in pricing their product. It really wasn't the shippers' problem. As a result, service contracts got a bad name, rather than carrier management decisions.

Mr. Diaz: My response is probably going to be more opinion than anything else, because I think you're asking a question of fairness in this issue of common carriage. Why should there be fairness in common carriage? I get back to my point, you're one shipper and I'm one carrier, but there are a lot more of you than there is of me. So—and [it's] also not just me, there are 30 of us in the Pacific trade.

So, the ability to deliver a price-volume relationship with service contracts—and believe me, we have one service contract that has any kind of teeth on service right now. One. It happens to be with this gentleman over here to my right [Mr. McCurdy]. All of the other service contracts that I have been involved with—and let me tell you, I've been involved with a lot of them over the last 4 years—have been for one reason, leveraging the rate structure. That's fact. I don't think I'm saying anything that's not factual here.

So, if you want to leverage the rate structure with volume, we can't oblige you. That is only good for you the day we sign the contract. But there's a thing called IA out there that immediately somebody can take for your competitor, for one FEU or for one revenue ton, or for one buck.

So, there's no discipline in the system to allow what you're looking for.

Mr. Friedmann: Let me jump in for just a second and explain the law and then Ray can add more.

If you have two people on the same level such as wholesalers or retailers, they get the same price. The volume discounts that you're entitled to under the Robinson/Pattman concept are based on savings of cost. Theoretically, there is no discrimination because you're treating those customers with the same volumes, times, and distances in the same way.

Service contracts, on the other hand, are recognized as negotiated documents, representing agreements between carriers and shippers in various situations. The only time the carrier is not permitted to discriminate is if a shipper comes in who is similarly situated, that is, virtually an identical, or mirror [image], of the shipper who's originally negotiating that contract.

If I could add one thing, I think you're correct. If service contracts were confidential, I think you'd eliminate a lot of the abuses and a lot of the "me too" situations that exist.

I'm sorry, Ray. I thought maybe that would help.

Mr. Ebeling: If I could just follow-up for a minute, because I think this is a very important issue. It's one that, historically, I think the overwhelming response has been the opposite of what you're saying. But, if there is a consensus by the shippers, I think they should make that loud and clear.

Let me follow up on the point Mike Diaz was making earlier. The smaller shipper that follows the path-breaking contract is going to get a deal. He may not get the deal from me and he may not get it from you, but there are several other carriers, and he will get a deal, too. That's the dynamics of the market. There's nothing we can do, or the conference can do, or the FMC can do, to prevent that.

Mr. Walker: It seems to me the discussion focuses on the fact that all contracting parties are businesses, whether they are carton suppliers, material suppliers, or whatever. I expect them to come to the table with their best deal, because when I go out in the marketplace to sell my products, I go out with my best deal.

What happens when we interfere in this whole thing and create these barriers? The conference doesn't come out with their best deal. They come out with a deal they think they can get away with. That gives you this umbrella. We heard the term several times today. It creates an umbrella for a more efficient environment for suppliers of goods and services to operate.

All of a sudden you say, "Well, I thought I had the best deal." "Well, no, you don't really have the best deal, you have something higher than the best deal. This guy really has the best deal." So you say, "Well, let's get it down to there." "Okay." "Now is that the best deal? I don't know. Let's see who else negotiates." Eventually, through this discrimination process you get the real market, whatever that real market is.

What I'm saying is that under the structure of a cartel, this discrimination, these unfair practices are normal. This is natural. Everybody's going to be screaming at everybody else. We can eliminate all of that. If I, as an individual businessman, and you, as an individual businessman, can come to the same table and say, "Give me your best deal." I'll take it out and I'll shop that in the marketplace and I'll find my best deal.

We can't do that under the present circumstances. As I understand the direction of the members of the conferences they're going to eliminate that option for people to find the best deal. Ultimately, the ideal situation of the cartel is that the best deal is their deal, no other.

Mr. Friedmann: "It's like deja vu all over again."

We faced this in 1982, 1983 and 1984. Then, just like now, it was the carriers who were saying, "Listen, we want to protect the shippers against discriminatory treatment. Because we might cut an early deal with one shipper and some other shipper will have a better deal later. The first shipper will be upset. So, we want to protect the shipper from discriminatory treatment."

That was the argument the carriers used against independent action, with the exception of Sea-Land. Carriers were opposed to service contracts because of that discriminatory treatment. Now, why should independent action be extended to service contracts in the act? Because the shippers said then, as they are saying today, "Hey, we'll take the risk of discrimination. We'll take that risk."

Shippers want the chance to negotiate so they will take the risk of discrimination. We are, once again, hearing the carriers saying, "We want to protect you shippers from discrimination." And the shippers are saying, "We do not wish you to protect us."

Small shippers may fear that their lack of negotiating leverage will disadvantage them against large shippers. Well, the bottom line is that included in the Shipping Act is the shipper's association mechanism. We tried to get antitrust immunity for shippers associations. That didn't fly all the way through Congress, only through the Senate. But there was that effort to provide the small shipper with the benefit of some negotiating leverage through shipper associations. Some of them have worked and some of them have not worked well.

But the shippers are willing to take the discrimination and I think carriers are going to have to come up with some other argument than, "We're doing this because it's best for shippers," when the shippers constantly say, "We'll take the risk of discrimination."

Now, we have no time for Issue Three, but we will have a a minute or two of summary remarks from each of the panelists.

Mr. Walker: I think everybody understands my position. I'm a free market type person. I don't believe in cartels. I don't believe in government interference in the marketplace in this context. I do think an open market forces us to create the most efficient market, the most efficient allocation of resources of all participants in the marketplace.

The current structure we have to deal with in the shipping industry is a cartel. They make it look like, sound like, taste like, and feel like a non cartel. It's going to be very, very difficult to do that. It is almost a question of, if you're going to swim in the race, you're going to have to get wet. You can't be halfway.

From my perspective, the shipping industry and the agricultural industry would be far better off in a free and open market environment where each and every participant comes to the marketplace with their goods and services and they negotiate the best deal they can possibly negotiate. That's essentially where I'm coming from, and if we want to amend this current act, I would say this: If we're going to have to have a cartel and the carriers get to line up all their horses on one side, then I strongly, strongly urge all the shippers to line up our political and economic muscle on the other side. Then, we'll play cartel against cartel, because that's the only way we will ever come out with an equal negotiating position.

The way production agriculture is fractured—we represent various commodities, groups, and so forth—we're just too fractured to make the current system work in our favor. If we come together, create an equitable political and economic force, vis-a-vis the carrier industry, then we can play cartel to cartel and we can all sit around and fix the rates and the prices to our best benefit.

Mr. McCurdy: I wanted to just echo what Perry [Walker] has said. We're in the marketplace daily. We make a deal, they make a deal. We take the risk. The thing that's amazing is that it's working. The comment I wanted to make is that—this isn't criticism, it's a statement—maybe the carriers at this point in time are afraid to try it.

The rail carriers work. We don't beat them in the ground. We know their business, they know ours. When we have the volume to commit from a point of origin to a destination, they're willing to write a contract. If we have a point we ship to that's very low volume, we recognize that. We don't ask for any deal. We pay the tariff.

I don't know why that's so hard. You have the same opportunity of achievement in the ocean freight industry.

If I can, we have several suggestions that we think—that is Du Pont thinks— might help alleviate a lot of the difficulties that currently exist. One, and foremost, we think that service contracts should be made totally confidential and be between the carrier and the shipper involved. It should be no one else's business.

When we first stated this, when the 1984 act went through, we were in the minority. The carriers, among others, disagreed with us. As time has passed, we see more and more people coming to our side. By the time the act comes up for revision, we think we will be joined by the majority and perhaps it will go in the other direction. But, first and foremost is the confidentiality of the service contracts.

Another thing, I'm like Perry, I'm a free market person. I think the FMC should stay out of monitoring of service contracts. I think the only thing they should be doing is looking at the contracts to see if they, in fact, are contracts. Do they meet all the standard requirements of common law definition of contracts? The word is in the statute, and it's a term of art and has a specific meaning. Is this an enforceable contract of law or not? If it is, then the FMC's function, as far as I'm concerned—assuming it's not violative of the 1984 Act—should be finished.

Unfortunately, the FMC has tried to get into the commercial aspects of some of the service contracts. They don't have any business there. That's between the shipper and the carrier. They should only look to see if it's a viable valid contract and enforceable.

Third, I think that the requirement—and this is a regulatory requirement—[that] the FMC currently has put on modifications to contracts works to the detriment of both carriers and contractors. Very frequently you'll enter into a contract that is long term, and that is what Du Pont wants. But, you're not permitted to adapt the contract. FMC service contract rules should be modified to permit the addition on new commodities, destination and origin points- and contract to have longer terms while retaining the flexibility needed to respond to changing customer markets. Finally, Du Pont would urge that the right of independent action for service contracts be extended to members of conferences that elected not to offer or negotiate in good faith for such service contracts on behalf of their membership. Du Pont believes that these changes to the Shipping Act of 1984 and its implementing regulations would significantly reduce the opportunity for abuse that currently exist while preserving the intent of those who negotiated and passed the act.

Mr. Ebeling: I guess in conclusion I'd just like to make one comment about a possible change to the Shipping Act, and that concerns independent action.

The purpose of a conference is to permit carriers to act collectively to overcome market instability. Independent action conflicts with this purpose almost by definition. Conferences that do not exercise internal discipline and whose members resort to independent action too easily and often will create an effect opposite to the one intended by the conference system.

In the weak markets that have prevailed since the 1984 act took effect, independent action has thus weakened the ability of a conference to control rate

erosion and instability. Despite this, however, I want to stress that Sea-Land does not advocate repeal of the independent action provisions of the Shipping Act. Again, we believe the emphasis should be on modification.

For example, we think the unhealthy effects of independent action could be moderated by extending the time frame and/or allowing conference consideration. There may be some other revisions to the Shipping Act that would be helpful as well, but I think we would like to come back overall to Bob Poteet's comment this morning, "If it ain't broke, don't fix it."

Mr. Diaz: It's really been fun being here.

Frankly, it's good to get this feedback. But I think it's important for you to realize that the Shipping Act of 1984 really wasn't what put conferences into being, that was the Shipping Act of 1916, if my memory serves me. It's pretty difficult for carriers, shippers, legislatures, and Government agencies to try to cure all the ills of the international shipping business [with one piece of legislation], given that it's definitely a dynamic market.

We're reasonably satisfied. We're really unable to tie the ills of our industry directly to the Shipping Act right now. I think it's way too complicated to do that. What we really can say is that some of the tools that the act brought us have been used in a way that have caused great damage to the shipping companies. We are in favor of independent action. We affirm that. We're not in favor of independent action on service contracts. We aren't afraid of service contracts. But, we do think there need to be some amendments to service contracts.

I agree with Mr. McCurdy's comments on the inability to modify service contracts. The regulations associated with service contracts are somewhat onerous on both sides of the equation. But I think the important thing to remember is that the Shipping Act represents a balance of shipper and carrier interests. It's a product of debate and compromise. I think we need to renew that debate and deal with the compromise and focus on the principles, which is the experience we've had over the last 4 years with the Shipping Act.

If I can leave you with one message, let's try to communicate a little bit better.

Mr. Friedmann: I'd like to thank our panelists for their insight, its been a very informative session.

Closing Remarks

James A. Caron
Director
International Division
USDA Office of
Transportation
Lakeland Workshop,
Feb. 9, 1989

If you came here for simple answers, I'm sure that you will go away disappointed. However, if you came to hear both sides of this important issue, I'm sure you are delighted. Our objective was to present, discuss, and question the major issues related to the Shipping Act of 1984, and I think that we have been successful. We also hope that you will leave with an understanding of how the Shipping Act of 1984 affects all agricultural exporters.

If you feel that you want to learn more, or want to become involved in the process, there are two main options available:

(1) The Federal Maritime Commission (FMC) is preparing a report, partly based on opinion surveys. That report, mandated by the Act, will be presented to Congress in 1989. All shippers, shippers' associations, carriers, and freight forwarders are encouraged by the FMC to complete a survey. In addition, the FMC has formed study groups of shippers and carriers to develop position papers for their industries. Copies of the FMC report and study group position papers will be made available to the public.

(2) A Review Commission will be formed to evaluate the FMC report, study group papers, and reports from the Departments of Justice and Transportation, and the International Trade Commission. In addition, the Commission will be conducting hearings to gather input from private sector organizations. Agricultural exporters will be allowed to provide comments or testimony before the commission.

The USDA Office of Transportation is working with industry associations to assess the ocean shipping problems facing agriculture. We are developing a report that will discuss the long-term ocean transportation needs of agricultural exporters. We hope to identify specific provisions of the Shipping Act that have helped agricultural exporters, and portions that may require clarification or revision. Our objective is to help make transportation a key component in agricultural competitiveness, and improve the business partnership of shippers and ocean carriers.

We intend to continue to take an active role in ocean transportation issues, and hope that agriculture can work together in the review of the Shipping Act of 1984.

Thursday, May 26, 1988
Ramada Inn
Fresno, California

Co-Sponsors: USDA Office of Transportation
California Agricultural Technology Institute, California State University, Fresno

Welcome and Opening Remarks

. John Hagen, Department of Agricultural Economics, California State University, Fresno
. Juan Batista, Center for Agricultural Business, California Agricultural Technology Institute, Fresno, CA
. Martin F. Fitzpatrick, Jr., USDA, Office of Transportation
. Jim Caron, USDA, Office of Transportation

Ocean Shipping Regulation - Present Conditions and Future Action

This session provides an overview of ocean shipping regulation and how it affects the agricultural exporter.

Speaker: . Peter Friedmann, Agriculture Ocean Transportation Coalition Washington, DC

Getting Involved - Perspectives from Agricultural Exporters

A panel of agricultural exporters discusses current ocean transportation problems and issues, and why agricultural interests should be involved in the Shipping Act review process.

Moderator: . Bert Mason, Department of Agricultural Economics, California State University, Fresno
Panelists: . Perry Walker, Riverbend Inc., Sanger, CA
. Chuck Villard, Bonner Packing Co., Fresno, CA
. Tom Spence, Pacific Lumber and Shipping Co., Seattle, WA
. Jeff Coppersmith, Coppersmith Freight Forwarders, Los Angeles, CA
. Bill McGowan, Wespaco International, Seattle, WA

Shipping Act of 1984 Industry Impact Analysis

Learn how the act will be reviewed, the importance of input by agriculture, and how to organize an industry study, from the policy research perspective.

Moderator: . Amy Friedheim, USDA, Office of Transportation, Washington, DC
Panelists: . Ernie Worden, Federal Maritime Commission, Washington, DC
. Wes Wilson, Department of Agriculture Economics, Washington State University, Pullman, WA
. Rob Neenan, USDA, Office of Transportation, Washington, DC

Ocean Shipping Strategies for the Exporter - An Operational and Policy Approach

Agricultural exporters present approaches to dealing with ocean carriers, and possible courses of future action.

Moderator: . Peter Friedmann, Agriculture Ocean Transportation Coalition, Washington, DC

Panelists:
. Paul Crouch, CALCOT Ltd., Bakersfield, CA
. Bill Bosque, J.E. Lowden & Co., San Francisco, CA
. Bob Buckingham, First International Shippers Association, Seattle, WA
. Bill McCurdy, E.I. duPont de Nemours, Wilmington, DE
. Craig Smith, Northwest Food Processors Association, Portland, OR

Shippers' Perspectives - Closing Remarks

Speaker: . Ken Casavant, Department of Agricultural Economics, Washington State University, Pullman, WA

Thursday, Oct. 27, 1988
Hyatt Regency Hotel
Houston, Texas

Co-Sponsors: USDA Office of Transportation
Houston World Trade Association
Port of Houston Authority

In cooperation with:
Texas Cotton Association
United Fresh Fruit & Vegetable Association

Welcome and Opening Remarks

. Rob Neenan, Economist, USDA Office of Transportation, Washington, DC
. Steve Jaeger, Director of Marketing, Port of Houston Authority, Houston, TX
. Joe Hafner, President, Houston World Trade Association, Houston, TX
. Martin F. Fitzpatrick, Jr., Administrator, USDA Office of Transportation, Washington, DC

Ocean Shipping Regulation - Present Conditions and Future Action

This session provides an overview of ocean shipping regulation and how it affects the agricultural exporter.

Speaker: . Peter Friedmann, Agriculture Ocean Transportation Coalition, Washington, DC

Perspectives from Agricultural Exporters

A panel of agricultural exporters will discuss current ocean transportation problems and issues, and why agriculture should be involved in the Shipping Act review process.

Moderator: . Ken Casavant, Washington State University, Pullman, WA

Panelists:
. David Dubois, Brittian International Inc., Brownsville, TX
. Phil White, Excel Corp., Wichita, KS
. Pat Hanemann, Dole Citrus Company, Ontario, CA
. Bob Poteet, Texas Cotton Association, Dallas, TX

Shipping Act of 1984 Industry Impact Analysis

Researchers discuss how the act will be reviewed, the importance of input by agriculture, and the results of current studies.

Moderator: . Amy Friedheim, USDA, Office of Transportation, Washington, DC

Panelists:
. Ernie Worden, Federal Maritime Commission, Washington, DC
. Rob Neenan, USDA, Office of Transportation, Washington, DC
. Wes Wilson, Department of Agriculture Economics, Washington State University, Pullman, WA

Luncheon Speaker: Edward J. Philbin, Federal Maritime Commission, Washington, DC

A Debate of the Issues

A panel of shippers and carriers debate current ocean shipping issues, and possible revisions of the Shipping Act of 1984. Issues related to service contracts, tariffs, surcharges, and independent action will be discussed.

Moderator: . Jim Caron, USDA, Office of Transportation

Panelists:
. Perry Walker, Riverbend, Sanger, CA
. Bill McCurdy, E.I. duPont de Nemours, Wilmington, DE
. Terry Spilsbury, Sea-Land Service, Iselin NJ
. Michael Diaz, American President Lines Co., Oakland, CA

Shippers' Perspectives - Closing Remarks

Speaker: . Jim Caron, USDA, Office of Transportation

Thursday, Feb. 9, 1989
Sheraton Hotel
Lakeland, Florida

Co-Sponsors: USDA Office of Transportation
Florida Citrus Mutual

In cooperation with:
United Fresh Fruit & Vegetable Association

Welcome and Opening Remarks

. Bobby F. McKnown, Florida Citrus Mutual, Lakeland, FL
. Jim Caron, USDA, Office of Transportation, Washington, DC

Ocean Shipping Regulation - Present Conditions and Future Action

This session provides an overview of ocean shipping regulation and how it affects the agricultural exporter.

Speaker: . Peter Friedmann, Agriculture Ocean Transportation Coalition, Washington, DC

Perspectives from Agricultural Exporters

A panel of agricultural exporters will discuss current ocean transportation problems and issues, and why agriculture should be involved in the Shipping Act review process.

Moderator: . Ken Casavant, Washington State University, Pullman, WA

Panelists: . Richard Graves, Graves Brothers, Wabasso, FL
. Sally Tabb, Tri-State Export Company, Albany, GA
. Don Lins, Seald Sweet Growers, Tampa, FL
. William Shinpock, Augusta Logging Exporters, Staunton, VA

Should the Conference System Be Eliminated?

What would be the long-term impact on rates and services if the ocean shipping conference system was eliminated?

Moderator: . Rob Neenan, USDA, Office of Transportation, Washington, DC

Panelists: . Ron Gottshall, TWRA, San Francisco, CA
. Pat Hanemann, Dole Citrus Company, Ontario, CA

Luncheon Speaker: Edward J. Philbin, Federal Maritime Commission, Washington, DC

A Debate of the Issues

A panel of shippers and carriers debate current ocean shipping issues, and possible revisions of the Shipping Act of 1984. Issues related to service contracts, tariffs, surcharges, and independent action will be discussed.

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. Terry Spilsbury, Sea-Land Service, Iselin NJ
. Michael Diaz, American President Lines Co., Oakland, CA

Shippers' Perspectives - Closing Remarks

Speaker: . Jim Caron, USDA, Office of Transportation

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Cal Dept. of Food & Agr.
Sacramento, CA

Olivia Linke
FL Worldwide Citrus Products
Brandenton, FL

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Seald-Sweet Growers
Tampa, FL

Robert Lubeck
U.S. Intermodal Services
Modesto, CA

Jack Mageson
Agri-Marketing Services
Beoville, TX

Mark C. Malambri
Sea-Land Service, Inc.
Houston, TX

Lisa Maness
Stevens Shipping & Terminal Co.
Savannah, GA

Tom Martin
National Hay Association
Amarillo, TX

Bill Martin
National Hay Assoc.
Amarillo, TX

Bert Mason
Fresno State University
Fresno, CA

J.C.O. Mathews
Del Monte Tropical Fruit Co.
Coral Gables, FL

William E. May
American Cotton Shippers Assn.
Memphis, TX

Lynn McClelland
U.S. Dept. of Transportation
Seattle, WA

Bill McCurdy
E.I. Du Pont de Nemours & Co., Inc.
Wilmington, DE

Claude E. McGavic
Manatee County Port Authority
Palmetto, FL

Manuel McGinn
John S. James Co.
Jacksonville, FL

Bill McGowan
Wespaco International
Seattle, WA

Bobby F. McKown
Florida Citrus Mutual
Lakeland, FL

Linda E. Miller
Granada Corp.
Houston, TX

David Milwood
Golden River Fruit Co.
Vero Beach, FL

Jack Mock
Coca-Cola Foods
Auburndale, FL

Cathy Mueller
Pacific Fruit Press
Atherton, CA

Donna Murphy
Pacific Lumber & Shipping
Seattle, WA

Dale Nelson
Superior Farming Co.
Bakersfield, CA

Rusty Newton
Lake Wales Citrus Growers
Lake Wales, FL

Craig Nieblas
Suntreat Growers & Shippers
Lindsay, CA

Gosta Noren
Cool Carriers
Tampa, FL

Andy Ott
Port of Houston Authority
Houston, TX

Debbie Page
Unibay, Inc.
Tampa, FL

Jim Percy
Ocean Spray Cranberries, Inc.
Vero Beach, FL

Michael Perez
Tampa Port Authority
Cape Canaveral, FL

Louis J. Perez
Canaveral Port Authority
Cape Canaveral, FL

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Sea-Land Service, Inc.
Arlington Heights, IL

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Florida Dept. of Citrus
Lakeland, FL

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Federal Maritime Commission
Washington, DC

Ken Porter
Plains Cotton Enterprises Inc.
Lubbock, TX

Howard Posner
Harborside Refrigerated Serv.
Tampa, FL

Bob Pryor
Arthur J. Fritz & Co.
Houston, TX

Susan Quam
Professional Export Service
Minneapolis, MN

Donna Rea
Wawona Frozen Foods
Clovis, CA

Franklin Reitz
Foreign Forwarding, Inc.
Milwaukee, WI

Ted Rekerdres
Rekerdres & Sons Insurance Inc.
Dallas, TX

Mark Richarte
M.B. Richarte & Son
Clovis, CA

Tom Roberts
Suntreat Growers & Shippers
Lindsay, CA

Elise Roberts
William G. Roe & Sons, Inc.
Winter Haven, FL

Patricia Rodriguez
Lykes Pasco, Inc.
Dade City, FL

Quentin Roe
William G. Roe & Sons, Inc.
Winter Haven, FL

Anne Rominger
California Baby Lamb
Esparto, CA

Keith Rudd
Florida Dept. of Agriculture
Winter Haven, FL

Michel Sallin
I.M.G. Enterprise, Inc.
Clermont, FL

Jean Sapp
C&J Sapp Publishing & Groves
Lehigh Acres, FL

Chris Sapp
C&J Sapp Publishing & Groves
Lehigh Acres, FL

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Lykes Bros. Steamship Co., Inc.
Houston, TX

J. Brantley Schirard
Dole Citrus
Vero Beach, FL

Andy Shetler
Port of Houston Authority
Houston, TX

Charles M. Shinn, Jr.
Citrus Shops
Winter Haven, FL

William Shinpock
Augusta Logging Exporters
Staunton, VA

Ray Shorey
CAL-HAY
Chowchilla, CA

Caroline Shults
Sunview International
Winter Haven, FL

W. W. Siebert
Indian River Citrus Sales, Inc.
Wabasso, FL

L. R. Sletten
Valley View Packing Co.
San Jose, CA

Charles Smallwood
California State University
Fresno, CA

Bobby Smith
Ryan-Walsh Maritime Serv.
Houston, TX

Craig Smith
Northwest Food Processing Assn.
Portland, OR

Keith Smith
Winter Garden Citrus Products
Winter Garden, FL

Lee Smolen
W. G. Carroll & Co., Inc.
Atlanta, GA

Randy Snider
American Rice, Inc.
Houston, TX

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Ontario, CA

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Seattle, WA

Terry Spilsbury
Sea-Land Service, Inc.
Iselin, NJ

Wally Stauffer
Sunview International
Delano, CA

Kevin Stengel
Burlington Northern Railroad
Houston, TX

Jeff Streblow
Wilbur-Ellis Co.
San Francisco, CA

Nathan Sukiennik
Lykes Bros. Steamship Co.
Houston, TX

Sally Tabb
Tri-State Export Co.
Albany, GA

Sharon Tabor
Anderson Clayton Co.
Fresno, CA

Nobuko Takeda
Nippon Express U.S.A., Inc.
Miami, FL

Pete Taylor
Lakeland Packing Co.
Lakeland, FL

Sara Taylor
Alexander International, Inc.
Memphis, TN

James E. Taylor
Del Monte Fresh Fruit Int'l.
Hamilton, Bermuda

Ted Taylor
Anderson Clayton Co.
Fresno, CA

John Tierney
John Tierney Associates
Bellevue, WA

Tina Uecker
Bonner Packing Co.
Fresno, CA

Judy Utley
Oak Ridge Vineyards
Lodi, CA

David Vellenga
Arizona State University
Tempe, AZ

Chuck Villard
Bonner Packing Co.
Fresno, CA

Michael Walden
Kerr Steamship Co.
Long Beach, CA

Perry Walker
Riverbend
Sanger, CA

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Larry Weir
Gardinier, Inc.
Tampa, FL

Harold E. Welch
Tampa Port Authority
Tampa, FL

Joseph C. Wellman
Bordo Citrus Products, Inc.
Winter Haven, FL

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R.E. Wells Cotton Co.
Fresno, CA
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Richard Wetzel
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Jeffrey White
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Lykes Pasco, Inc.
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Mission Produce
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Jack Williams
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Wes Wilson
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